113TH CONGRESS
2d Session
HOUSE OF REPRESENTATIVES
REPT. 113–676
Part 1

SUPPLYING KNOWLEDGE-BASED IMMIGRANTS AND LIFTING LEVELS OF STEM VISAS ACT

DECEMBER 15, 2014.—Committed to the Committee of the Whole House on the State of the Union and ordered to be printed

Mr. GOODLATTE, from the Committee on the Judiciary, submitted the following

R E P O R T

together with

DISSENTING VIEWS

[To accompany H.R. 2131]

[Including cost estimate of the Congressional Budget Office]

The Committee on the Judiciary, to whom was referred the bill (H.R. 2131) to amend the Immigration and Nationality Act to enhance American competitiveness through the encouragement of high-skilled immigration, and for other purposes, having considered the same, reports favorably thereon with an amendment and recommends that the bill as amended do pass.

CONTENTS

49–006

The Amendment

The amendment is as follows:

Strike all after the enacting clause and insert the following:

SECTION 1. SHORT TITLE.

This Act may be cited as the "Supplying Knowledge-based Immigrants and Lifting Levels of STEM Visas Act" or the "SKILLS Visa Act".

SEC. 2. TABLE OF CONTENTS.

The table of contents for this Act is as follows:

SEC. 3. SENSE OF CONGRESS.

It is the sense of the Congress that:

(1) Our Nation's future economic prosperity in the global economy is strongly linked to the ability of our schools to educate students in the science, technology, engineering, and mathematics (STEM) subjects.

(2) A portion of application fees paid by employers seeking to hire foreign workers should be devoted to supporting improvements in STEM education in the United States, including computer science education, at the elementary, secondary, and university levels in order to reduce our dependence on foreign workers over time.

(3) Such funds should be used to support—

(A) building the capacity of every State to improve student achievement in STEM subjects, especially in the most high-need school districts;

(B) supporting innovation in STEM education through partnerships between elementary and secondary schools, universities, non-profits, businesses, and informal education and community-based partners;

(C) broadening the diversity and capacity of the STEM education pipeline in the United States through scholarships and other forms of assistance to American students who study in these subjects; and

(D) improving and promoting STEM education for underrepresented populations, including economically disadvantaged individuals in STEM fields.

TITLE I—IMMIGRANT VISA REFORMS

SEC. 101. IMMIGRANT VISAS FOR CERTAIN ADVANCED STEM GRADUATES.

(a) WORLDWIDE LEVEL OF IMMIGRATION.—Section 201(d)(1)(A) of the Immigration and Nationality Act (8 U.S.C. 1151(d)(1)(A)) is amended by striking "140,000," and inserting "140,000 in fiscal years through 2013 and 195,000 beginning in fiscal year 2014, reduced for any fiscal year beginning in fiscal year 2014 by the number by which the number of visas under section 201(e) would have been reduced in that year pursuant to section 203(d) of the Nicaraguan Adjustment and Central Amer-

ican Relief Act (8 U.S.C. 1151 note) if section 201(e) had not been repealed by section 106 of the SKILLS Visa Act,".

(b) PREFERENCE ALLOCATION FOR EMPLOYMENT-BASED IMMIGRANTS.—Section 203(b) of such Act (8 U.S.C. 1153(b)) is amended—

(1) by redesignating paragraph (6) as paragraph (9); and

(2) by inserting after paragraph (5) the following:

"(6) ALIENS HOLDING DOCTORATE DEGREES FROM U.S. DOCTORAL INSTITUTIONS OF HIGHER EDUCATION IN SCIENCE, TECHNOLOGY, ENGINEERING, OR MATHEMATICS.—

"(A) IN GENERAL.—Visas shall be made available, in a number not to exceed 55,000, reduced for any fiscal year by the number by which the number of visas under section 201(e) would have been reduced in that year pursuant to section 203(d) of the Nicaraguan Adjustment and Central American Relief Act (8 U.S.C. 1151 note) if section 201(e) had not been repealed by section 106 of the SKILLS Visa Act, plus any visas not required for the classes specified in paragraph (1), to qualified immigrants who—

"(i) hold a doctorate degree in a field of science, technology, engineering, or mathematics from a United States doctoral institution of higher education, or have successfully completed a dental, medical, or veterinary residency program (within the summary group of residency programs in the Department of Education's Classification of Instructional Programs taxonomy), have received a medical degree (MD) in a program that prepares individuals for the independent professional practice of medicine (series 51.12 in the Department of Education's Classification of Instructional Programs taxonomy), have received a dentistry degree (DDS, DMD) in a program that prepares individuals for the independent professional practice of dentistry/dental medicine (series 51.04 in the Department of Education's Classification of Instructional Programs taxonomy), have received a veterinary degree (DVM) in a program that prepares individuals for the independent professional practice of veterinary medicine (series 51.24 in the Department of Education's Classification of Instructional Programs taxonomy), or have received an osteopathic medicine/osteopathy degree (DO) in a program that prepares individuals for the independent professional practice of osteopathic medicine (series 51.19 in the Department of Education's Classification of Instructional Programs taxonomy) from an institution that is described in subclauses (I), (III), and (IV) of subparagraph (B)(iii); and

"(ii) have taken not less than 85 percent of the courses required for such degrees, including all courses taken by correspondence (including courses offered by telecommunications) or by distance education, while physically present in the United States.

"(B) DEFINITIONS.—For purposes of this paragraph, paragraph (7), and sections 101(a)(15)(F)(i)(I) and 212(a)(5)(A)(iii)(III):

"(i) The term 'distance education' has the meaning given such term in section 103 of the Higher Education Act of 1965 (20 U.S.C. 1003).

"(ii) The term 'field of science, technology, engineering, or mathematics' means a field included in the Department of Education's Classification of Instructional Programs taxonomy within the summary groups of computer and information sciences and support services, engineering, biological and biomedical sciences, mathematics and statistics, physical sciences, and the series geography and cartography (series 45.07), advanced/graduate dentistry and oral sciences (series 51.05) and nursing (series 51.38).

"(iii) The term 'United States doctoral institution of higher education' means an institution that—

"(I) is described in section 101(a) of the Higher Education Act of 1965 (20 U.S.C. 1001(a)) or is a proprietary institution of higher education (as defined in section 102(b) of such Act (20 U.S.C. 1002(b)));

"(II) was classified by the Carnegie Foundation for the Advancement of Teaching on January 1, 2013, as a doctorate-granting university with a very high or high level of research activity or classified by the National Science Foundation after the date of enactment of this paragraph, pursuant to an application by the institution, as having equivalent research activity to those institutions that had been classified by the Carnegie Foundation as being doctorate-granting universities with a very high or high level of research activity;

"(III) has been in existence for at least 10 years; and

"(IV) is accredited by an accrediting body that is itself accredited either by the Department of Education or by the Council for Higher Education Accreditation.

"(C) LABOR CERTIFICATION REQUIRED.—

"(i) IN GENERAL.—Subject to clause (ii), the Secretary of Homeland Security may not approve a petition filed for classification of an alien under subparagraph (A) unless the Secretary of Homeland Security is in receipt of a determination made by the Secretary of Labor pursuant to the provisions of section 212(a)(5)(A), except that the Secretary of Homeland Security may, when the Secretary deems it to be in the national interest, waive this requirement.

"(ii) REQUIREMENT DEEMED SATISFIED.—The requirement of clause (i) shall be deemed satisfied with respect to an employer and an alien in a case in which a certification made under section 212(a)(5)(A)(i) has already been obtained with respect to the alien by that employer.

"(7) ALIENS HOLDING MASTER'S DEGREES FROM U.S. DOCTORAL INSTITUTIONS OF HIGHER EDUCATION IN SCIENCE, TECHNOLOGY, ENGINEERING, OR MATHEMATICS.—

"(A) IN GENERAL.—Any visas not required for the classes specified in paragraphs (1) and (6) shall be made available to the classes of aliens who—

"(i) hold a master's degree in a field of science, technology, engineering, or mathematics from a United States doctoral institution of higher education that was either part of a master's program that required at least 2 years of enrollment or part of a 5-year combined baccalaureate-master's degree program in such field;

"(ii) have taken not less than 85 percent of the master's degree courses in a field of science, technology, engineering, or mathematics, including all courses taken by correspondence (including courses offered by telecommunications) or by distance education, while physically present in the United States; and

"(iii) hold a baccalaureate degree in a field of science, technology, engineering, or mathematics.

"(B) LABOR CERTIFICATION REQUIRED.—

"(i) IN GENERAL.—Subject to clause (ii), the Secretary of Homeland Security may not approve a petition filed for classification of an alien under subparagraph (A) unless the Secretary of Homeland Security is in receipt of a determination made by the Secretary of Labor pursuant to the provisions of section 212(a)(5)(A), except that the Secretary of Homeland Security may, when the Secretary deems it to be in the national interest, waive this requirement.

"(ii) REQUIREMENT DEEMED SATISFIED.—The requirement of clause (i) shall be deemed satisfied with respect to an employer and an alien in a case in which a certification made under section 212(a)(5)(A)(i) has already been obtained with respect to the alien by that employer.

"(C) DEFINITIONS.—The definitions in paragraph (6)(B) shall apply for purposes of this paragraph.".

(c) ALIENS WHO ARE MEMBERS OF THE PROFESSIONS HOLDING ADVANCED DEGREES OR ALIENS OF EXCEPTIONAL ABILITY.—Section 203(b)(2)(A) of such Act (8 U.S.C. 1153(b)(2)(A)) is amended by striking "paragraph (1)," and inserting "paragraphs (1), (6), (7), and (8),".

(d) SKILLED WORKERS, PROFESSIONALS, AND OTHER WORKERS.—Section 203(b)(3)(A) of such Act (8 U.S.C. 1153(b)(3)(A)) is amended by striking "paragraphs (1) and (2)," and inserting "paragraphs (1), (2), (6), and (7),".

(e) PROCEDURE FOR GRANTING IMMIGRANT STATUS.—Section 204(a)(1)(F) of such Act (8 U.S.C. 1154(a)(1)(F)) is amended—

(1) by striking "(F)" and inserting "(F)(i)";

(2) by striking "or 203(b)(3)" and inserting "203(b)(3), 203(b)(6), or 203(b)(7)";

(3) by striking "Attorney General" and inserting "Secretary of Homeland Security"; and

(4) by adding at the end the following:

"(ii) The following processing standards shall apply with respect to petitions under clause (i) relating to alien beneficiaries qualifying under paragraph (6) or (7) of section 203(b):

"(I) The Secretary of Homeland Security shall adjudicate such petitions not later than 60 days after the date on which the petition is filed. In the event that additional information or documentation is requested by the Secretary during such 60-day period, the Secretary shall adjudicate the petition not later

than 30 days after the date on which such information or documentation is received.

"(II) The petitioner shall be notified in writing within 30 days of the date of filing if the petition does not meet the standards for approval. If the petition does not meet such standards, the notice shall include the reasons therefore and the Secretary shall provide an opportunity for the prompt resubmission of a modified petition.".

(f) LABOR CERTIFICATION AND QUALIFICATION FOR CERTAIN IMMIGRANTS.—Section 212(a)(5) of such Act (8 U.S.C. 1182(a)(5)) is amended—

(1) in subparagraph (A)—

(A) in clause (ii)—

(i) in subclause (I), by striking ", or" at the end and inserting a semicolon;

(ii) in subclause (II), by striking the period at the end and inserting "; or"; and

(iii) by adding at the end the following:

"(III) holds a doctorate degree in a field of science, technology, engineering, or mathematics from a United States doctoral institution of higher education (as defined in section 203(b)(6)(B)(iii)).";

(B) by redesignating clauses (ii) through (iv) as clauses (iii) through (v), respectively;

(C) by inserting after clause (i) the following:

"(ii) JOB ORDER.—

"(I) IN GENERAL.—An employer who files an application under clause (i) shall submit a job order for the labor the alien seeks to perform to the State workforce agency in the State in which the alien seeks to perform the labor. The State workforce agency shall post the job order on its official agency website for a minimum of 30 days and not later than 3 days after receipt using the employment statistics system authorized under section 15 of the Wagner-Peyser Act (29 U.S.C. 49 et seq.).

"(II) LINKS.—The Secretary of Labor shall include links to the official websites of all State workforce agencies on a single webpage of the official website of the Department of Labor."; and

(D) by adding at the end the following:

"(vi) PROCESSING STANDARDS FOR ALIEN BENEFICIARIES QUALIFYING UNDER PARAGRAPHS (6) AND (7) OF SECTION 203(b).—The following processing standards shall apply with respect to applications under clause (i) relating to alien beneficiaries qualifying under paragraph (6) or (7) of section 203(b):

"(I) The Secretary of Labor shall adjudicate such applications not later than 180 days after the date on which the application is filed. In the event that additional information or documentation is requested by the Secretary during such 180-day period, the Secretary shall adjudicate the application not later than 60 days after the date on which such information or documentation is received.

"(II) The applicant shall be notified in writing within 60 days of the date of filing if the application does not meet the standards for approval. If the application does not meet such standards, the notice shall include the reasons therefore and the Secretary shall provide an opportunity for the prompt resubmission of a modified application."; and

(2) in subparagraph (D), by striking "(2) or (3)" and inserting "(2), (3), (6), or (7)".

(g) GAO STUDY.—Not later than June 30, 2019, the Comptroller General of the United States shall provide to the Congress the results of a study on the use by the National Science Foundation of the classification authority provided under section 203(b)(6)(B)(iii)(II) of the Immigration and Nationality Act (8 U.S.C. 1153(b)(6)(B)(iii)(II)), as added by this section.

(h) PUBLIC INFORMATION.—The Secretary of Homeland Security shall make available to the public on the official website of the Department of Homeland Security, and shall update not less than monthly, the following information (which shall be organized according to month and fiscal year) with respect to aliens granted status under paragraph (6) or (7) of section 203(b) of the Immigration and Nationality Act (8 U.S.C. 1153(b)), as added by this section:

(1) The name, city, and State of each employer who petitioned pursuant to either of such paragraphs on behalf of one or more aliens who were granted status in the month and fiscal year to date.

(2) The number of aliens granted status under either of such paragraphs in the month and fiscal year to date based upon a petition filed by such employer.

(3) The occupations for which such alien or aliens were sought by such employer and the job titles listed by such employer on the petition.

(i) EFFECTIVE DATE.—The amendments made by this section shall take effect on October 1, 2013, and shall apply with respect to fiscal years beginning on or after such date. Nothing in the preceding sentence shall be construed to prohibit the Secretary of Homeland Security from accepting before such date petitions under section 204(a)(1)(F) of the Immigration and Nationality Act (8 U.S.C. 1154(a)(1)(F)) relating to alien beneficiaries qualifying under paragraph (6) or (7) of section 203(b) of such Act (8 U.S.C. 1153(b)) (as added by this section).

SEC. 102. IMMIGRANT VISAS FOR ENTREPRENEURS.

(a) PREFERENCE ALLOCATION FOR EMPLOYMENT-BASED IMMIGRANTS.—Section 203(b) of the Immigration and Nationality Act (8 U.S.C. 1153(b)) is amended by inserting after paragraph (7) (as added by section 101 of this Act) the following:

"(8) ALIEN ENTREPRENEURS.—

"(A) IN GENERAL.—Visas shall be made available, in a number not to exceed 10,000, plus any visas not required for the classes specified in paragraphs (1), (2), and (3), to the following classes of aliens:

"(i) VENTURE CAPITAL-BACKED START-UP ENTREPRENEURS.—

"(I) IN GENERAL.—An alien is described in this clause if the alien intends to engage in a new commercial enterprise (including a limited partnership) in the United States—

"(aa) with respect to which the alien has completed an investment agreement requiring an investment in the enterprise in an amount not less than $500,000, subject to subclause (III), on the part of—

"(AA) a venture capital fund whose investment adviser is a qualified venture capital entity; or

"(BB) 2 or more qualified angel investors; and

"(bb) which will benefit the United States economy and, during the 3-year period beginning on the date on which the visa is issued under this paragraph, will—

"(AA) create full-time employment for at least 5 United States workers within the enterprise; and

"(BB) raise not less than an additional $1,000,000 in capital investment, subject to subclause (III), or generate not less than $1,000,000 in revenue, subject to subclause (III).

"(II) DEFINITIONS.—For purposes of this clause:

"(aa) INVESTMENT.—The term 'investment' does not include any assets acquired, directly or indirectly, by unlawful means.

"(bb) INVESTMENT ADVISER.—The term 'investment adviser' has the meaning given such term under section 202(a)(11) of the Investment Advisers Act of 1940 (15 U.S.C. 80b-2(a)(11)).

"(cc) QUALIFIED ANGEL INVESTOR.—The term 'qualified angel investor' means an individual who—

"(AA) is an accredited investor (as defined in section 230.501(a) of title 17, Code of Federal Regulations (as in effect on April 1, 2010));

"(BB) is a United States citizen or an alien lawfully admitted to the United States for permanent residence; and

"(CC) has made at least 2 investments during the 3 year period before the date of a petition by the qualified immigrant for classification under this paragraph.

"(dd) QUALIFIED VENTURE CAPITAL ENTITY.—The term 'qualified venture capital entity' means, with respect to a qualified immigrant, an entity that—

"(AA) serves as an investment adviser to a venture capital fund that is making an investment under this paragraph;

"(BB) has its primary office location or principal place of business in the United States;

"(CC) is owned and controlled, directly or indirectly, by individuals the majority of whom are United States citizens or aliens lawfully admitted to the United States for permanent residence;

"(DD) has been advising one or more venture capital funds for a period of at least 2 years before the date of the petition for classification under this paragraph; and

"(EE) advises one or more venture capital funds that have made at least 2 investments of not less than $500,000 in each of the 2 years before the date of the petition for classification under this paragraph.

"(ee) VENTURE CAPITAL FUND.—The term 'venture capital fund' means an entity—

"(AA) that is classified as a 'venture capital operating company' under section 2510.3–101(d) of title 29, Code of Federal Regulations (as in effect on January 1, 2013) or has management rights in its portfolio companies to the extent required by such section if the venture capital fund were classified as a venture capital operating company;

"(BB) has capital commitments of not less than $10,000,000; and

"(CC) whose general partner or managing member is owned and controlled, directly or indirectly, by individuals the majority of whom are United States citizens or aliens lawfully admitted to the United States for permanent residence.

"(III) INFLATION ADJUSTMENT.—Effective for the first fiscal year that begins more than 6 months after the date of the enactment of this clause, and for each fiscal year thereafter, the amounts described in subclauses (I) and (II) shall be increased by the percentage (if any) by which the Consumer Price Index for the month of June preceding the date on which such increase takes effect exceeds the Consumer Price Index for the same month of the preceding calendar year. An increase described in the preceding sentence shall apply to aliens filing petitions under section 204(a)(1)(H) on or after the date on which the increase takes effect. For purposes of this clause, the term 'Consumer Price Index' means the Consumer Price Index for all urban consumers published by the Department of Labor.

"(ii) TREATY INVESTORS.—Immigrants who have been issued a visa or otherwise provided nonimmigrant status under section 101(a)(15)(E)(ii) (not including alien employees of the treaty investor) who have maintained that status for a minimum of 10 years and have benefitted the United States economy and created full-time employment for not fewer than 5 United States workers for a minimum of 10 years.

"(B) DEFINITIONS.—For purposes of this paragraph:

"(i) The term 'full-time employment' has the meaning given such term in paragraph (5).

"(ii) The term 'United States worker' means an employee (other than the immigrant or the immigrant's spouse, sons, or daughters) who—

"(I) is a citizen or national of the United States; or

"(II) is an alien who is lawfully admitted for permanent residence, is admitted as a refugee under section 207, is granted asylum under section 208, or is an immigrant otherwise authorized to be employed in the United States.".

(b) PROCEDURES FOR GRANTING IMMIGRANT STATUS.—Section 204(a)(1)(H) of the Immigration and Nationality Act (8 U.S.C. 1154(a)(1)(H)) is amended—

(1) by striking "section 203(b)(5)" and inserting "paragraph (5) or (8) of section 203(b)"; and

(2) by striking "Attorney General" and inserting "Secretary of Homeland Security".

(c) CONDITIONAL PERMANENT RESIDENT STATUS.—

(1) IN GENERAL.—

(A) CONFORMING AMENDMENTS.—Section 216A of the Immigration and Nationality Act (8 U.S.C. 1186b) is amended—

(i) in the section heading, by striking "ENTREPRENEURS," and inserting "INVESTORS,".

(ii) by striking "Attorney General" each place such term appears and inserting "Secretary of Homeland Security";

(iii) by striking "entrepreneur" each place such term appears and inserting "investor"; and

(iv) In subsection (c)(3)(A), by striking "the such filing" and inserting "such filing".

(B) TABLE OF CONTENTS.—The item relating to section 216A in the table of contents of the Immigration and Nationality Act (8 U.S.C. 1101 et seq.) is amended to read as follows:

"Sec. 216A. Conditional permanent resident status for certain alien investors, spouses, and children.".

(2) CONDITIONAL PERMANENT RESIDENT STATUS FOR CERTAIN ALIEN ENTREPRENEURS, SPOUSES, AND CHILDREN.—

(A) IN GENERAL.—Chapter 2 of title II of the Immigration and Nationality Act (8 U.S.C. 1181 et seq.) is amended by inserting after section 216A the following:

"SEC. 216B. CONDITIONAL PERMANENT RESIDENT STATUS FOR CERTAIN ALIEN ENTREPRENEURS, SPOUSES, AND CHILDREN.

"(a) IN GENERAL.—

"(1) CONDITIONAL BASIS FOR STATUS.—Notwithstanding any other provision of this Act, an alien entrepreneur (as defined in subsection (f)(1) of this section), alien spouse, and alien child (as defined in subsection (f)(2) of this section) shall be considered, at the time of obtaining the status of an alien lawfully admitted for permanent residence, to have obtained such status on a conditional basis subject to the provisions of this section.

"(2) NOTICE OF REQUIREMENTS.—

"(A) AT TIME OF OBTAINING PERMANENT RESIDENCE.—At the time an alien entrepreneur, alien spouse, or alien child obtains permanent resident status on a conditional basis under paragraph (1), the Secretary of Homeland Security shall provide for notice to such an entrepreneur, spouse, or child respecting the provisions of this section and the requirements of subsection (c)(1) of this section to have the conditional basis of such status removed.

"(B) AT TIME OF REQUIRED PETITION.—In addition, the Secretary of Homeland Security shall attempt to provide notice to such an entrepreneur, spouse, or child, at or about the beginning of the 90-day period described in subsection (d)(2)(A) of this section, of the requirements of subsection (c)(1) of this section.

"(C) EFFECT OF FAILURE TO PROVIDE NOTICE.—The failure of the Secretary of Homeland Security to provide a notice under this paragraph shall not affect the enforcement of the provisions of this section with respect to such an entrepreneur, spouse, or child.

"(b) TERMINATION OF STATUS IF FINDING THAT QUALIFYING ENTREPRENEURSHIP IMPROPER.—

"(1) IN GENERAL.—In the case of an alien entrepreneur with permanent resident status on a conditional basis under subsection (a) of this section, if the Secretary of Homeland Security determines, before the third anniversary of the alien's obtaining the status of lawful admission for permanent residence, that—

"(A) the required investment in the commercial enterprise under section 203(b)(8)(A)(i)(I) was intended solely as a means of evading the immigration laws of the United States;

"(B)(i) any requisite capital to be invested under section 203(b)(8)(A)(i)(I) had not been invested, or was not actively in the process of being invested; or

"(ii) the alien was not sustaining the actions described in clause (i) throughout the period of the alien's residence in the United States; or

"(C) the alien was otherwise not conforming to the requirements of section 203(b)(8)(A)(i);

then the Secretary of Homeland Security shall so notify the alien involved and, subject to paragraph (2), shall terminate the permanent resident status of the alien (and the alien spouse and alien child) involved as of the date of the determination.

"(2) HEARING IN REMOVAL PROCEEDING.—Any alien whose permanent resident status is terminated under paragraph (1) may request a review of such determination in a proceeding to remove the alien. In such proceeding, the burden of proof shall be on the Secretary of Homeland Security to establish, by a preponderance of the evidence, that a condition described in paragraph (1) is met.

"(c) REQUIREMENTS OF TIMELY PETITION AND INTERVIEW FOR REMOVAL OF CONDITION.—

"(1) IN GENERAL.—In order for the conditional basis established under subsection (a) of this section for an alien entrepreneur, alien spouse, or alien child to be removed—

"(A) the alien entrepreneur must submit to the Secretary of Homeland Security, during the period described in subsection (d)(2), a petition which requests the removal of such conditional basis and which states, under penalty of perjury, the facts and information described in subsection (d)(1); and

"(B) in accordance with subsection (d)(3), the alien entrepreneur must appear for a personal interview before an officer or employee of the Department of Homeland Security respecting the facts and information described in subsection (d)(1).

"(2) TERMINATION OF PERMANENT RESIDENT STATUS FOR FAILURE TO FILE PETITION OR HAVE PERSONAL INTERVIEW.—

"(A) IN GENERAL.—In the case of an alien with permanent resident status on a conditional basis under subsection (a) of this section, if—

"(i) no petition is filed with respect to the alien in accordance with the provisions of paragraph (1)(A); or

"(ii) unless there is good cause shown, the alien entrepreneur fails to appear at the interview described in paragraph (1)(B) (if required under subsection (d)(3) of this section), the Secretary of Homeland Security shall terminate the permanent resident status of the alien (and the alien's spouse and children if it was obtained on a conditional basis under this section or section 216A) as of the third anniversary of the alien's lawful admission for permanent residence.

"(B) HEARING IN REMOVAL PROCEEDING.—In any removal proceeding with respect to an alien whose permanent resident status is terminated under subparagraph (A), the burden of proof shall be on the alien to establish compliance with the conditions of subparagraphs (A) and (B) of paragraph (1).

"(3) DETERMINATION AFTER PETITION AND INTERVIEW.—

"(A) IN GENERAL.—If—

"(i) a petition is filed in accordance with the provisions of paragraph (1)(A); and

"(ii) the alien entrepreneur appears at any interview described in paragraph (1)(B);

the Secretary of Homeland Security shall make a determination, within 90 days of the date of such filing or interview (whichever is later), as to whether the facts and information described in subsection (d)(1) and alleged in the petition are true with respect to the qualifying commercial enterprise.

"(B) REMOVAL OR EXTENSION OF CONDITIONAL BASIS.—

"(i) IN GENERAL.—Except as provided in clause (ii), if the Secretary of Homeland Security determines that such facts and information are true, including demonstrating that the alien complied with subsection (d)(1)(B)(i), the Secretary shall so notify the alien involved and shall remove the conditional basis of the alien's status effective as of the third anniversary of the alien's lawful admission for permanent residence.

"(ii) EXCEPTION.—If the petition demonstrates that the facts and information are true, including demonstrating that the alien is in compliance with section (d)(1)(B)(ii), then the Secretary of Homeland Security may, in the Secretary's discretion, extend the conditional status for an additional year at the end of which—

"(I) the alien must file a petition within 30 days after the fourth anniversary of the alien's lawful admission for permanent residence demonstrating that the alien complied with subsection (d)(1)(B)(i) and the Secretary shall remove the conditional basis of the alien's status effective as of such fourth anniversary; or

"(II) the conditional status shall terminate.

"(C) DETERMINATION IF ADVERSE DETERMINATION.—If the Secretary of Homeland Security determines that such facts and information are not true, the Secretary shall so notify the alien involved and, subject to subparagraph (D), shall terminate the permanent resident status of an alien entrepreneur, alien spouse, or alien child as of the date of the determination.

"(D) HEARING IN REMOVAL PROCEEDING.—Any alien whose permanent resident status is terminated under subparagraph (C) may request a review of such determination in a proceeding to remove the alien. In such proceeding, the burden of proof shall be on the Secretary of Homeland Security to establish, by a preponderance of the evidence, that the facts and information described in subsection (d)(1) of this section and alleged in the petition are not true with respect to the qualifying commercial enterprise.

"(d) DETAILS OF PETITION AND INTERVIEW.—

"(1) CONTENTS OF PETITION.—Each petition under subsection (c)(1)(A) shall contain facts and information demonstrating that—

"(A)(i) any requisite capital to be invested under section 203(b)(8)(A)(i)(I) had been invested, or was actively in the process of being invested; and

"(ii) the alien sustained the actions described in clause (i) throughout the period of the alien's residence in the United States;

"(B)(i) the alien created the employment required under section 203(b)(8)(A)(i)(I)(bb)(AA); or

"(ii) the alien is actively in the process of creating the employment required under section 203(b)(8)(A)(i)(I)(bb)(AA) and will create such employment before the fourth anniversary of the alien's lawful admission for permanent residence; and

"(C) the alien is otherwise conforming to the requirements of section 203(b)(8)(A)(i).

"(2) PERIOD FOR FILING PETITION.—

"(A) 90-DAY PERIOD BEFORE SECOND ANNIVERSARY.—Except as provided in subparagraph (B), the petition under subsection (c)(1)(A) of this section must be filed during the 90-day period before the third anniversary of the alien's lawful admission for permanent residence.

"(B) DATE PETITIONS FOR GOOD CAUSE.—Such a petition may be considered if filed after such date, but only if the alien establishes to the satisfaction of the Secretary of Homeland Security good cause and extenuating circumstances for failure to file the petition during the period described in subparagraph (A).

"(C) FILING OF PETITIONS DURING REMOVAL.—In the case of an alien who is the subject of removal hearings as a result of failure to file a petition on a timely basis in accordance with subparagraph (A), the Secretary of Homeland Security may stay such removal proceedings against an alien pending the filing of the petition under subparagraph (B).

"(3) PERSONAL INTERVIEW.—The interview under subsection (c)(1)(B) shall be conducted within 90 days after the date of submitting a petition under subsection (c)(1)(A) and at a local office of the Department of Homeland Security, designated by the Secretary of Homeland Security, which is convenient to the parties involved. The Secretary, in the Secretary's discretion, may waive the deadline for such an interview or the requirement for such an interview in such cases as may be appropriate.

"(e) TREATMENT OF PERIOD FOR PURPOSES OF NATURALIZATION.—For purposes of title III, in the case of an alien who is in the United States as a lawful permanent resident on a conditional basis under this section, the alien shall be considered to have been admitted as an alien lawfully admitted for permanent residence and to be in the United States as an alien lawfully admitted to the United States for permanent residence.

"(f) DEFINITIONS.—In this section:

"(1) The term 'alien entrepreneur' means an alien who obtains the status of an alien lawfully admitted for permanent residence (whether on a conditional basis or otherwise) under section 203(b)(8)(A)(i)(I) of this title.

"(2) The term 'alien spouse' and the term 'alien child' mean an alien who obtains the status of an alien lawfully admitted for permanent residence (whether on a conditional basis or otherwise) by virtue of being the spouse or child, respectively, of an alien entrepreneur.

"(3) The term 'commercial enterprise' includes a limited partnership.".

(B) CLERICAL AMENDMENT.—The table of contents for such Act is amended by inserting after the item relating to section 216A the following:

"Sec. 216B. Conditional permanent resident status for certain alien entrepreneurs, spouses, and children.".

(d) EFFECTIVE DATE.—The amendments made by this section shall take effect on October 1, 2013, and shall apply with respect to fiscal years beginning on or after such date.

SEC. 103. ADDITIONAL EMPLOYMENT-BASED IMMIGRANT VISAS.

(a) WORLDWIDE LEVEL OF EMPLOYMENT-BASED IMMIGRANTS.—Section 201(d)(1)(A) of the Immigration and Nationality Act (8 U.S.C. 1151(d)(1)(A)), as amended by section 101, is further amended by striking "195,000" and inserting "235,000".

(b) PRIORITY WORKERS.—Section 203(b)(1) of such Act (8 U.S.C. 1153(b)(1)) is amended by striking "28.6 percent of such worldwide level," and inserting "40,040,".

(c) ALIENS WHO ARE MEMBERS OF THE PROFESSIONS HOLDING ADVANCED DEGREES OR ALIENS OF EXCEPTIONAL ABILITY.—Section 203(b)(2)(A) of such Act (8 U.S.C. 1153(b)(2)(A)) is amended by striking "28.6 percent of such worldwide level," and inserting "55,040,".

(d) SKILLED WORKERS, PROFESSIONALS, AND OTHER WORKERS.—Section 203(b)(3)(A) of such Act (8 U.S.C. 1153(b)(3)(A)) is amended by striking "28.6 percent of such worldwide level," and inserting "55,040,".

(e) CERTAIN SPECIAL IMMIGRANTS.—Section 203(b)(4) of such Act (8 U.S.C. 1153(b)(4)) is amended by striking "7.1 percent of such worldwide level," and inserting "9,940,".

(f) EMPLOYMENT CREATION.—Section 203(b)(5)(A) of such Act (8 U.S.C. 1153(b)(5)(A)) is amended by striking "7.1 percent of such worldwide level," and inserting "9,940,".

(g) EFFECTIVE DATE.—The amendments made by this section shall take effect on October 1, 2013, and shall apply with respect to fiscal years beginning on or after such date.

(h) ADJUSTMENT OF STATUS FOR EMPLOYMENT-BASED IMMIGRANTS.—Section 245 of such Act (8 U.S.C. 1255) is amended by adding at the end the following:

"(n) ADJUSTMENT OF STATUS FOR EMPLOYMENT-BASED IMMIGRANTS.—

"(1) PETITION.—An alien who has status under subparagraph (H)(i)(b), (L), or (O)(i) of section 101(a)(15) or who has status under subparagraph (F) or (M) of such section and who has received optional practical training after completion of the alien's course of study, and any eligible dependents of such alien, who has filed a petition or on whose behalf a petition has been filed for immigrant status pursuant to subparagraph (E), (F), (G), or (H) of section 204(a)(1), may concurrently, or at any time thereafter, file an application with the Secretary of Homeland Security for adjustment of status if such petition has been approved, regardless of whether an immigrant visa is immediately available at the time the application is filed.

"(2) AVAILABILITY.—An application filed pursuant to paragraph (1) may not be approved until the date on which an immigrant visa becomes available.".

SEC. 104. EMPLOYMENT CREATION IMMIGRANT VISAS.

(a) CHANGES TO THE GENERAL PROGRAM.—

(1) CAPITAL.—Section 203(b)(5)(C) of the Immigration and Nationality Act (8 U.S.C. 1153(b)(5)(C)) is amended by adding at the end the following:

"(iv) CAPITAL DEFINED.—For purposes of this paragraph, the term 'capital' does not include any assets acquired, directly or indirectly, by unlawful means.".

(2) INFLATION ADJUSTMENT.—Such section, as amended by paragraph (1), is further amended by adding at the end the following:

"(v) INFLATION ADJUSTMENT.—

"(I) INITIAL ADJUSTMENT.—As of the date of enactment of the SKILLS Visa Act, the amount specified in the first sentence of clause (i) shall be increased by the percentage (if any) by which the Consumer Price Index for the month preceding such enactment date exceeds the Consumer Price Index for the same month of calendar year 1990. The increase described in the preceding sentence shall apply to aliens filing petitions under section 204(a)(1)(H) on or after such enactment date.

"(II) SUBSEQUENT ADJUSTMENTS.—Effective for the first fiscal year that begins more than 6 months after the date of the enactment of this clause, and for each fiscal year thereafter, the amount described in subclause (I) (as of the last increase to such amount) shall be increased by the percentage (if any) by which the Consumer Price Index for the month of June preceding the date on which such increase takes effect exceeds the Consumer Price Index for the same month of the preceding calendar year. An increase described in the preceding sentence shall apply to aliens filing petitions under section 204(a)(1)(H) on or after the date on which the increase takes effect.

"(III) DEFINITION.—For purposes of this clause, the term 'Consumer Price Index' means the Consumer Price Index for all urban consumers published by the Department of Labor.".

(3) FLEXIBILITY FOR JOB CREATION TIME PERIOD.—

(A) REMOVAL OF CONDITIONAL BASIS IF FAVORABLE DETERMINATION.—Section 216A(c)(3)(B) of the Immigration and Nationality Act (8 U.S.C. 1186b(c)(3)(B)), is amended to read as follows:

"(B) REMOVAL OR EXTENSION OF CONDITIONAL BASIS.—

"(i) IN GENERAL.—Except as provided under clause (ii), if the Secretary of Homeland Security determines that such facts and information are true, including demonstrating that the alien complied with section (d)(1)(B)(i), the Secretary shall so notify the alien involved and shall remove the conditional basis of the alien's status effective as of the second anniversary of the alien's lawful admission for permanent residence.

"(ii) EXCEPTION.—If the petition demonstrates that the facts and information are true, including demonstrating that the alien is in compliance with section (d)(1)(B)(ii), then the Secretary of Homeland Security may in the Secretary's discretion extend the conditional status for an additional year at the end of which—

"(I) the alien must file a petition within 30 days after the third anniversary of the alien's lawful admission for permanent residence demonstrating that the alien complied with section (d)(1)(B)(i) and the Secretary shall remove the conditional basis of the alien's status effective as of such third anniversary; or

"(II) the conditional status shall terminate.".

(B) CONTENTS OF PETITION.—Section 216A(d)(1) of such Act (8 U.S.C. 1186b(d)(1)) is amended—

(i) by striking "and" at the end of subparagraph (A);

(ii) by redesignating subparagraph (B) as subparagraph (C); and

(iii) by inserting after subparagraph (A) the following:

"(B)(i) created the employment required under section 203(b)(5)(A)(ii); or

"(ii) is actively in the process of creating the employment required under section 203(b)(5)(A)(ii) and will create such employment before the third anniversary of the alien's lawful admission for permanent residence; and".

(4) TARGETED EMPLOYMENT AREAS.—

(A) TARGETED EMPLOYMENT AREA DEFINED.—Section 203(b)(5)(B)(ii) of the Immigration and Nationality Act (8 U.S.C. 1153(b)(5)(B)(ii)) is amended by striking "(of at least 150 percent of the national average rate)".

(B) SET-ASIDE FOR TARGETED EMPLOYMENT AREA.—Section 203(b)(5)(B) of the Immigration and Nationality Act (8 U.S.C. 1153(b)(5)(B)) is amended by adding at the end the following:

"(iv) DEFINITION.—In this paragraph, the term 'an area which has experienced high unemployment' means an area which has an unemployment rate of at least 150 of the national average rate. Such an area must fit entirely within a geographical unit that the Secretary of Labor has determined has an unemployment rate of at least 150 percent of the national average rate (and which determination has not been superseded by a later determination in which the Secretary of Labor has found that the unit did not have an unemployment rate of at least 150 percent of the national average rate). The Secretary of Labor shall set forth a uniform methodology for determining whether an area an area qualifies as having experienced unemployment of at least 150 percent of the national average rate. It shall be within the discretion of the Secretary of Homeland Security to determine whether any particular area has experienced high unemployment for purposes of this paragraph, and the Secretary shall not be bound by the determination of any other governmental or nongovernmental entity that a particular area has experienced high unemployment for purposes of this paragraph.".

(b) REGIONAL CENTERS.—

(1) PERMANENT REAUTHORIZATION OF THE REGIONAL CENTER PILOT PROGRAM.—Section 610 of the Departments of Commerce, Justice, and State, the Judiciary, and Related Agencies Appropriations Act, 1993 (8 U.S.C. 1153 note) is amended—

(A) in the section heading, by striking "PILOT"; and

(B) in subsection (b), by striking "until September 30, 2015".

(2) PERSONS BARRED FROM INVOLVEMENT IN REGIONAL CENTERS.—

(A) PROHIBITION.—Such section 610 is amended by adding at the end the following:

"(e)(1) No person who—

"(A) has been convicted of an aggravated felony (as defined in section 101(a)(43) of the Immigration and Nationality Act (8 U.S.C. 1101(a)(43)));

"(B) would be inadmissible under section 212(a)(3) of such Act (8 U.S.C. 1182(a)(3)) if they were an alien seeking admission; or

"(C) has been convicted of violating, or found to have violated, a fraud provision of the Federal securities laws (as such term is defined under section 3 of the Securities Exchange Act of 1934 (15 U.S.C. 78c)),

shall knowingly be permitted by any regional center to be involved with the regional center as its principal, representative, administrator, owner, officer, board member, manager, executive, general partner, fiduciary, member, or in other similar position of substantive authority for the operations, management, or promotion of the regional center.

"(2) The Secretary of Homeland Security shall require such attestations and information (including biometric information), and shall perform such criminal record

checks and other background checks with respect to a regional center, and persons involved in a regional center as described in paragraph (1), as the Secretary, in the Secretary's discretion, considers appropriate to determine whether the regional center is in compliance with paragraph (1).

"(3) The Secretary may terminate any regional center from the program under this section if the Secretary determines that—

"(A) the regional center is in violation of paragraph (1);

"(B) the regional center has provided any false attestation or information under paragraph (2), or continues to allow any person who was involved with the regional center as described in paragraph (1) to continue to be involved with the regional center if the regional center knows that the person has provided any false attestation or information under paragraph (2); or

"(C) the regional center fails to provide an attestation or information requested by the Secretary under paragraph (2), or continues to allow any person who was involved with the regional center as described in paragraph (1) to continue to be involved with the regional center if the regional center knows that the person has failed to provide an attestation or information requested by the Secretary under paragraph (2).

"(4) For the purpose of this subsection, the term 'regional center' shall, in addition to the regional center itself, include any commercial enterprise or job creating enterprise in which a regional center has invested.".

(B) COMPLIANCE WITH SECURITIES LAWS.—Such section 610, as amended by subparagraph (A), is further amended by adding at the end the following:

"(f)(1) The Secretary of Homeland Security shall not approve an application for regional center designation or regional center amendment that does not certify that the regional center and all parties to the regional center are in and will maintain compliance with Federal securities laws (as such term is defined under section 3 of the Securities Exchange Act of 1934 (15 U.S.C. 78c)).

"(2) The Secretary of Homeland Security shall immediately terminate the designation of any regional center that does not provide the certification described in paragraph (1) on an annual basis.

"(3) In addition to any other authority provided to the Secretary of Homeland Security regarding the program described in this section, the Secretary may suspend or terminate the designation of any regional center if the Secretary determines that the regional center, or any party to the regional center:

"(A) is permanently or temporarily enjoined by order, judgment, or decree of any court of competent jurisdiction in connection with the purchase or sale of a security;

"(B) is subject to any order of the Securities and Exchange Commission that bars such person from association with an entity regulated by the Securities and Exchange Commission, or constitutes a final order based on violations in connection with the purchase or sale of a security;

"(C) has been convicted of violating, or found to have violated, a fraud provision of the Federal securities laws (as such term is defined under section 3 of the Securities Exchange Act of 1934 (15 U.S.C. 78c)); or

"(D) knowingly submitted or caused to be submitted a certification described in paragraphs (1) or (2) of this subsection that contained an untrue statement of material fact, or omitted to state a material fact necessary, in order to make the statements made, in light of the circumstances under which they were made, not misleading.

"(4) Nothing in this subsection shall be construed to impair or limit the authority of the Securities and Exchange Commission under the Federal securities laws.

"(5) For the purpose of this subsection, the term 'party to the regional center' shall include, in addition to the regional center itself, its agents, servants, employees, attorneys, or any persons in active concert or participation with the regional center.".

(c) EFFECTIVE DATES.—

(1) IN GENERAL.—Except for the amendments made by paragraphs (1) and (2) of subsection (a), the amendments made by subsections (a) and (b) shall take effect on the date of the enactment of this Act and shall apply—

(A) to aliens filing petitions under section 204(a)(1)(H) of the Immigration and Nationality Act (8 U.S.C. 1154(a)(1)(H)) on or after such date;

(B) to a regional center (and any person involved with or a party to a regional center) designated before, on, or after such date; and

(C) to any application to designate a regional center, and any person involved with or a party to the regional center, that is pending on such date.

(2) DEFINITION OF "CAPITAL".—The amendment made by subsection (a)(1) shall take effect on the date of the enactment of this Act.

(3) INFLATION ADJUSTMENT.—The amendment made by subsection (a)(2) shall take effect as provided in section 203(b)(5)(C)(v) of the Immigration and Nationality Act, as added by subsection (a)(2) of this section.

SEC. 105. FAMILY-SPONSORED IMMIGRANT VISAS.

(a) WORLDWIDE LEVEL OF FAMILY-SPONSORED IMMIGRANTS.—Section 201(c)(1) of the Immigration and Nationality Act (8 U.S.C. 1151(c)(1)) is amended—

(1) in subparagraph (A)(i), by striking "480,000," and inserting "480,000 in fiscal years through 2013, 505,000 beginning in fiscal year 2014 through fiscal year 2023, and 440,000 beginning in fiscal year 2024,"; and

(2) in subparagraph (B)(ii), by striking "226,000." and inserting "226,000 in fiscal years through 2013, 251,000 beginning in fiscal year 2014 through fiscal year 2023, and 186,000 beginning in fiscal year 2024.".

(b) PREFERENCE ALLOCATION FOR FAMILY-SPONSORED IMMIGRANTS.—Section 203(a)(2) of such Act (8 U.S.C. 1153(a)(2)) is amended—

(1) by striking "114,200," and inserting "139,200,";

(2) by striking "226,000," and inserting "226,000 in fiscal years through 2013, 251,000 beginning in fiscal year 2014 through fiscal year 2023, and 186,000 beginning in fiscal year 2024,"; and

(3) by striking "77" and inserting "81.13".

(c) BROTHERS AND SISTERS OF CITIZENS.—

(1) IN GENERAL.—Section 203(a) of such Act (8 U.S.C. 1153(a)) is amended—

(A) in paragraph (1), by striking "23,400," and all that follows through the period at the end and inserting "23,400."; and

(B) by striking paragraph (4).

(2) CLASSIFICATION PETITIONS.—Section 204(a)(1)(A)(i) of such Act (8 U.S.C. 1154(a)(1)(A)(i)) is amended by striking "(1), (3), or (4)" and inserting "(1) or (3)".

(d) EFFECTIVE DATE.—The amendments made by this section shall take effect on October 1, 2013, and shall apply with respect to fiscal years beginning on or after such date, except that the amendments made by subsection (c)(1) shall take effect on October 1, 2023.

SEC. 106. ELIMINATION OF DIVERSITY IMMIGRANT PROGRAM.

(a) WORLDWIDE LEVEL OF DIVERSITY IMMIGRANTS.—Section 201 of the Immigration and Nationality Act (8 U.S.C. 1151) is amended—

(1) in subsection (a)—

(A) by inserting "and" at the end of paragraph (1);

(B) by striking "; and" at the end of paragraph (2) and inserting a period; and

(C) by striking paragraph (3); and

(2) by striking subsection (e).

(b) ALLOCATION OF DIVERSITY IMMIGRANT VISAS.—Section 203 of such Act (8 U.S.C. 1153) is amended—

(1) by striking subsection (c);

(2) in subsection (d), by striking "(a), (b), or (c)," and inserting "(a) or (b),";

(3) in subsection (e), by striking paragraph (2) and redesignating paragraph (3) as paragraph (2);

(4) in subsection (f), by striking "(a), (b), or (c)" and inserting "(a) or (b)"; and

(5) in subsection (g), by striking "(a), (b), and (c)" and inserting "(a) and (b)".

(c) PROCEDURE FOR GRANTING IMMIGRANT STATUS.—Section 204 of such Act (8 U.S.C. 1154) is amended—

(1) by striking subsection (a)(1)(I); and

(2) in subsection (e), by striking "(a), (b), or (c)" and inserting "(a) or (b)".

(d) EFFECTIVE DATE.—The amendments made by this section shall take effect on October 1, 2013, and shall apply with respect to fiscal years beginning on or after such date.

SEC. 107. NUMERICAL LIMITATION TO ANY SINGLE FOREIGN STATE.

(a) IN GENERAL.—Section 202(a)(2) of the Immigration and Nationality Act (8 U.S.C. 1152(a)(2)) is amended—

(1) in the paragraph heading, by striking "AND EMPLOYMENT-BASED";

(2) by striking "(3), (4), and (5)," and inserting "(3) and (4),";

(3) by striking "subsections (a) and (b) of section 203" and inserting "section 203(a)";

(4) by striking "7" and inserting "15"; and

(5) by striking "such subsections" and inserting "such section".

(b) CONFORMING AMENDMENTS.—Section 202 of the Immigration and Nationality Act (8 U.S.C. 1152) is amended—

(1) in subsection (a)(3), by striking "both subsections (a) and (b) of section 203" and inserting "section 203(a)";

(2) by striking subsection (a)(5); and

(3) by amending subsection (e) to read as follows:

"(e) SPECIAL RULES FOR COUNTRIES AT CEILING.—If it is determined that the total number of immigrant visas made available under section 203(a) to natives of any single foreign state or dependent area will exceed the numerical limitation specified in subsection (a)(2) in any fiscal year, in determining the allotment of immigrant visa numbers to natives under section 203(a), visa numbers with respect to natives of that state or area shall be allocated (to the extent practicable and otherwise consistent with this section and section 203) in a manner so that, except as provided in subsection (a)(4), the proportion of the visa numbers made available under each of paragraphs (1) through (4) of section 203(a) is equal to the ratio of the total number of visas made available under the respective paragraph to the total number of visas made available under section 203(a).".

(c) COUNTRY-SPECIFIC OFFSET.—Section 2 of the Chinese Student Protection Act of 1992 (8 U.S.C. 1255 note) is amended—

(1) in subsection (a), by striking "subsection (e))" and inserting "subsection (d))"; and

(2) by striking subsection (d) and redesignating subsection (e) as subsection (d).

(d) EFFECTIVE DATE.—The amendments made by this section shall take effect on October 1, 2013.

SEC. 108. PHYSICIANS.

(a) PERMANENT AUTHORIZATION OF THE CONRAD STATE 30 PROGRAM.—Section 220(c) of the Immigration and Nationality Technical Corrections Act of 1994 (Public Law 103–416; 8 U.S.C. 1182 note) is amended by striking "and before September 30, 2015".

(b) ALLOTMENT OF CONRAD 30 WAIVERS.—

(1) IN GENERAL.—Section 214(l) of the Immigration and Nationality Act (8 U.S.C. 1184(l)) is amended by adding at the end the following:

"(4)(A)(i) A State shall be allotted a total of 35 waivers under paragraph (1)(B) for a fiscal year if 90 percent of the waivers available to the State were used in the previous fiscal year.

"(ii) When an allotment has occurred under clause (i), the State shall be allotted an additional 5 waivers under paragraph (1)(B) for each subsequent fiscal year if 90 percent of the waivers available to the State were used in the previous fiscal year, except that if the State is allotted 60 or more waivers for a fiscal year, the State shall be eligible for the additional 5 waivers under this clause only if 90 percent of the waivers available to all States receiving at least 1 waiver under paragraph (1)(B) were used in the previous fiscal year.

"(B) Any increase in allotments under subparagraph (A) shall be maintained indefinitely, unless in a fiscal year, the total number of such waivers granted is 5 percent lower than in the last year in which there was an increase in the number of waivers allotted pursuant to this paragraph, in which case—

"(i) the number of waivers allotted shall be decreased by 5 for all States beginning in the next fiscal year; and

"(ii) each additional 5 percent decrease in such waivers granted from the last year in which there was an increase in the allotment, shall result in an additional decrease of 5 waivers allotted for all States, provided that the number of waivers allotted for all States shall not drop below 30.".

(2) ACADEMIC MEDICAL CENTERS.—Section 214(l)(1)(D) of the Immigration and Nationality Act (8 U.S.C. 1184(l)(1)(D)) is amended—

(A) in clause (ii), by striking "and" at the end;

(B) in clause (iii), by striking the period at the end and inserting "; and"; and

(C) by adding at the end the following:

"(iv) in the case of a request by an interested State agency—

"(I) the head of such agency determines that the alien is to practice medicine in, or be on the faculty of a residency program at, an academic medical center (as that term is defined in section 411.355(e)(2) of title 42, Code of Federal Regulations, or similar successor regulation), without regard to whether such facility is located within an area designated by the Secretary of Health and Human Services as having a shortage of health care professionals; and

"(II) the head of such agency determines that—

"(aa) the alien physician's work is in the public interest; and

"(bb) the grant of such waiver would not cause the number of the waivers granted on behalf of aliens for such State for a fiscal year (within the limitation in subparagraph (B) and subject to paragraph (4)) in accordance with the conditions of this clause to exceed 3.".

(c) EMPLOYMENT PROTECTIONS FOR PHYSICIANS.—

(1) IN GENERAL.—Section 214(l)(1)(C) of the Immigration and Nationality Act (8 U.S.C. 1184(l)(1)(C)) is amended by striking clauses (i) and (ii) and inserting the following:

"(i) the alien demonstrates a bona fide offer of full-time employment, at a health care organization, which employment has been determined by the Secretary of Homeland Security to be in the public interest; and

"(ii) the alien agrees to begin employment with the health facility or health care organization in a geographic area or areas which are designated by the Secretary of Health and Human Services as having a shortage of health care professionals by the later of the date that is 90 days after receiving such waiver, 90 days after completing graduate medical education or training under a program approved pursuant to section 212(j)(1), or 90 days after receiving nonimmigrant status or employment authorization, and agrees to continue to work for a total of not less than 3 years in any status authorized for such employment under this subsection unless—

"(I) the Secretary determines that extenuating circumstances exist that justify a lesser period of employment at such facility or organization, in which case the alien shall demonstrate another bona fide offer of employment at a health facility or health care organization, for the remainder of such 3-year period;

"(II) the interested State agency that requested the waiver attests that extenuating circumstances exist that justify a lesser period of employment at such facility or organization in which case the alien shall demonstrate another bona fide offer of employment at a health facility or health care organization so designated by the Secretary of Health and Human Services, for the remainder of such 3-year period; or

"(III) if the alien elects not to pursue a determination of extenuating circumstances pursuant to subclause (I) or (II), the alien terminates the alien's employment relationship with such facility or organization, in which case the alien shall be employed for the remainder of such 3-year period, and 1 additional year for each determination, at another health facility or health care organization in a geographic area or areas which are designated by the Secretary of Health and Human Services as having a shortage of health care professionals; and".

(2) CONTRACT REQUIREMENTS.—Section 214(l) of the Immigration and Nationality Act (8 U.S.C. 1184(l)), as amended by subsection (b)(1), is further amended by adding at the end the following:

"(5) An alien granted a waiver under paragraph (1)(C) shall enter into an employment agreement with the contracting health facility or health care organization that—

"(A) specifies the maximum number of on-call hours per week (which may be a monthly average) that the alien will be expected to be available and the compensation the alien will receive for on-call time;

"(B) specifies whether the contracting facility or organization will pay for the alien's malpractice insurance premiums, including whether the employer will provide malpractice insurance and, if so, the amount of such insurance that will be provided;

"(C) describes all of the work locations that the alien will work and a statement that the contracting facility or organization will not add additional work locations without the approval of the Federal agency or State agency that requested the waiver; and

"(D) does not include a non-compete provision.

"(6) An alien granted a waiver under paragraph (1)(C) whose employment relationship with a health facility or health care organization terminates during the 3-year service period required by such paragraph—

"(A) shall have a period of 120 days beginning on the date of such determination of employment to submit to the Secretary of Homeland Security applications or petitions to commence employment with another contracting health facility or health care organization in a geographic area or areas which are designated by the Secretary of Health and Human Services as having a shortage of health care professionals; and

"(B) shall be considered to be maintaining lawful status in an authorized stay during the 120-day period referred to in subparagraph (A).".

(d) AMENDMENTS TO THE PROCEDURES, DEFINITIONS, AND OTHER PROVISIONS RELATED TO PHYSICIAN IMMIGRATION.—

(1) DUAL INTENT FOR PHYSICIANS SEEKING GRADUATE MEDICAL TRAINING.—Section 214(b) of the Immigration and Nationality Act (8 U.S.C. 1184(b)) is amended by striking "(other than a nonimmigrant described in subparagraph (L) or (V) of section 101(a)(15), and other than a nonimmigrant described in any provision of section 101(a)(15)(H)(i) except subclause (b1) of such section)" and inserting "(other than a nonimmigrant described in subparagraph (L) or (V) of section 101(a)(15), a nonimmigrant described in any provision of section 101(a)(15)(H)(i), except subclause (b1) of such section, and an alien coming to the United States to receive graduate medical education or training as described in section 212(j) or to take examinations required to receive graduate medical education or training as described in section 212(j))".

(2) ALLOWABLE VISA STATUS FOR PHYSICIANS FULFILLING WAIVER REQUIREMENTS IN MEDICALLY UNDERSERVED AREAS.—Section 214(l)(2)(A) of the Immigration and Nationality Act (8 U.S.C. 1184(l)(2)(A)) is amended by striking "an alien described in section 101(a)(15)(H)(i)(b)." and inserting "any status authorized for employment under this Act.".

(3) PHYSICIAN NATIONAL INTEREST WAIVER CLARIFICATIONS.—

(A) PRACTICE AND GEOGRAPHIC AREA.—Section 203(b)(2)(B)(ii)(I) of the Immigration and Nationality Act (8 U.S.C. 1153(b)(2)(B)(ii)(I)) is amended by striking items (aa) and (bb) and inserting the following:

"(aa) the alien physician agrees to work on a full-time basis practicing primary care, specialty medicine, or a combination thereof, in an area or areas designated by the Secretary of Health and Human Services as having a shortage of health care professionals, or at a health care facility under the jurisdiction of the Secretary of Veterans Affairs; or

"(bb) the alien physician is pursuing such waiver based upon service at a facility or facilities that serve patients who reside in a geographic area or areas designated by the Secretary of Health and Human Services as having a shortage of health care professionals (without regard to whether such facility or facilities are located within such an area) and a Federal agency, or a local, county, regional, or State department of public health determines the alien physician's work was or will be in the public interest.".

(B) FIVE-YEAR SERVICE REQUIREMENT.—Section 203(b)(2)(B)(ii)(II) of the Immigration and Nationality Act (8 U.S.C. 1153(B)(ii)(II)) is amended—

(i) by inserting "(aa)" after "(II)"; and

(ii) by adding at the end the following:

"(bb) The 5-year service requirement of item (aa) shall be counted from the date the alien physician begins work in the shortage area in any legal status and not the date an immigrant visa petition is filed or approved. Such service shall be aggregated without regard to when such service began and without regard to whether such service began during or in conjunction with a course of graduate medical education.

"(cc) An alien physician shall not be required to submit an employment contract with a term exceeding the balance of the 5-year commitment yet to be served, nor an employment contract dated within a minimum time period prior to filing of a visa petition pursuant to this subsection.

"(dd) An alien physician shall not be required to file additional immigrant visa petitions upon a change of work location from the location approved in the original national interest immigrant petition.".

(4) TECHNICAL CLARIFICATION REGARDING ADVANCED DEGREE FOR PHYSICIANS.—Section 203(b)(2)(A) of the Immigration and Nationality Act (8 U.S.C. 1153(b)(2)(A)) is amended by adding at the end the following: "An alien physician holding a foreign medical degree that has been deemed sufficient for acceptance by an accredited United States medical residency or fellowship program is a member of the professions holding an advanced degree or its equivalent.".

(5) SHORT-TERM WORK AUTHORIZATION FOR PHYSICIANS COMPLETING THEIR RESIDENCIES.—A physician completing graduate medical education or training as described in section 212(j) of the Immigration and Nationality Act (8 U.S.C. 1182(j)) as a nonimmigrant described section 101(a)(15)(H)(i) of such Act (8 U.S.C. 1101(a)(15)(H)(i)) shall have such nonimmigrant status automatically extended until October 1 of the fiscal year for which a petition for a continuation of such nonimmigrant status has been submitted in a timely manner and where the employment start date for the beneficiary of such petition is October 1 of that fiscal year. Such physician shall be authorized to be employed incident to

status during the period between the filing of such petition and October 1 of such fiscal year. However, the physician's status and employment authorization shall terminate 30 days from the date such petition is rejected, denied or revoked. A physician's status and employment authorization will automatically extend to October 1 of the next fiscal year if all visas as described in such section 101(a)(15)(H)(i) authorized to be issued for the fiscal year have been issued.

(6) APPLICABILITY OF SECTION 212(e) TO SPOUSES AND CHILDREN OF J–1 EXCHANGE VISITORS.—A spouse or child of an exchange visitor described in section 101(a)(15)(J) of the Immigration and Nationality Act (8 U.S.C. 1101(a)(15)(J)) shall not be subject to the requirements of section 212(e) of the Immigration and Nationality Act (8 U.S.C. 1182(e)).

(e) EFFECTIVE DATE.—The amendments made by subsections (a) and (c) shall take effect on the date of the enactment of this Act and shall apply to aliens granted waivers before, on, or after the date of the enactment of this Act. Subsection (d), and the amendments made by subsections (b) and (d), shall take effect on October 1, 2013.

SEC. 109. PERMANENT PRIORITY DATES.

(a) IN GENERAL.—Section 203 of the Immigration and Nationality Act (8 U.S.C. 1153) is amended by adding at the end the following:

"(i) PERMANENT PRIORITY DATES.—

"(1) IN GENERAL.—Subject to subsection (h)(3) and paragraph (2), the priority date for any employment-based petition shall be the date of filing of the petition with the Secretary of Homeland Security (or the Secretary of State, if applicable), unless the filing of the petition was preceded by the filing of a labor certification with the Secretary of Labor, in which case that date shall constitute the priority date.

"(2) SUBSEQUENT EMPLOYMENT-BASED PETITIONS.—Subject to subsection (h)(3), an alien who is the beneficiary of any employment-based petition that was approvable when filed (including self-petitioners) shall retain the priority date assigned with respect to that petition in the consideration of any subsequently filed employment-based petition (including self-petitions).".

(b) EFFECTIVE DATE.—The amendment made by subsection (a) shall take effect on October 1, 2013, and shall apply to aliens who are a beneficiary of a classification petition pending on or after such date.

SEC. 110. SET-ASIDE FOR HEALTH CARE WORKERS.

Section 203(b)(3) of the Immigration and Nationality Act (8 U.S.C. 1153(b)(3)), as amended by this Act, is further amended—

(1) in subparagraph (A), by inserting after clause (iii) the following:

"(iv) HEALTH CARE WORKERS.—Qualified immigrants who are required to submit health care worker certificates pursuant to section 212(a)(5)(C) or certified statements pursuant to section 212(r) and will be working in a rural area or a health professional shortage area (as defined in section 332 of the Public Health Service Act (42 U.S.C. 254e)).''; and

(2) by adding at the end the following:

"(D) SET ASIDE FOR HEALTH CARE WORKERS.—

"(i) IN GENERAL.—Not less than 4,000 of the visas made available under this paragraph in each fiscal year shall be reserved for qualified immigrants described in subparagraph (A)(iv).

"(ii) UNUSED VISAS.—If the number of visas reserved under clause (i) has not been exhausted at the end of a given fiscal year, the Secretary of Homeland Security shall adjust upwards the numerical limitation in subparagraph (A) for that fiscal year by the amount remaining. Visas may be issued pursuant to such adjustment within the first 45 days of the next fiscal year to aliens who had applied for such visas during the fiscal year for which the adjustment was made.".

TITLE II—NONIMMIGRANT VISA REFORMS

SEC. 201. H–1B VISAS.

(a) INCREASE IN H–1B VISA NUMERICAL LIMIT.—Section 214(g) of the Immigration and Nationality Act (8 U.S.C. 1184(g)) is amended—

(1) in paragraph (1)(A)—

(A) in clause (vi), by striking "and" at the end;

(B) by amending clause (vii) to read as follows:

"(vii) 65,000 in fiscal years 2004 through 2013; and"; and

(C) by adding at the end the following:

"(viii) 155,000 in each succeeding fiscal year; or"; and

(2) by amending paragraph (5)(C) to read as follows:

"(C) meets the requirements of paragraph (6)(A) or (7)(A) of section 203(b), until the number of aliens who are exempted from such numerical limitation during such year exceeds 40,000.".

(b) WAGE LEVEL.—Section 212(n)(1)(A)(i) of the Immigration and Nationality Act (8 U.S.C. 1182(n)(1)(A)(i)) is amended—

(1) by striking ", and" at the end and inserting "; or";

(2) by redesignating subclauses (I) and (II) as items (aa) and (bb), respectively;

(3) by striking "(i)" and inserting "(i)(I)";

(4) by inserting "except as provided in subclause (II)," before "is offering"; and

(5) by adding at the end the following:

"(II) if 80 percent or more of the employer's workers in the same occupational classification as the alien admitted or provided status as an H-1B nonimmigrant and in the same area of employment as the alien admitted or provided status as an H-1B nonimmigrant are United States workers (as defined in paragraph (4)), is offering and will offer during the period of authorized employment to aliens admitted or provided status as an H-1B nonimmigrant wages that are at least the actual wage level paid by the employer to all other individuals with similar experience and qualifications for the specific employment in question (but, in the case of an employer with more than 25 employees, in no event shall such wages be lower than the mean of the lowest one-half of wages surveyed pursuant to subsection (p)(5)); and".

(c) SPOUSAL EMPLOYMENT.—Section 214(c)(2)(E) of the Immigration and Nationality Act (8 U.S.C. 1184(c)(2)(E)) is amended by striking "101(a)(15)(L)," and inserting "subparagraph (H)(i)(b), (H)(i)(b1), (E)(iii), or (L) of section 101(a)(15)".

(d) ANTI-FRAUD MEASURES.—

(1) FOREIGN DEGREES.—

(A) SPECIALTY OCCUPATION.—Section 214(i) of the Immigration and Nationality Act (8 U.S.C. 1184(i)) is amended by adding at the end the following:

"(4)(A) For purposes of paragraphs (1)(B) and (3)(B), the term 'bachelor's or higher degree' includes a foreign degree that is a recognized foreign equivalent of a bachelor's or higher degree.

"(B)(i) In the case of an alien with a foreign degree, any determination with respect to the equivalence of that degree to a degree obtained in the United States shall be made by the Secretary of State.

"(ii) In carrying out the preceding clause, the Secretary of State shall verify the authenticity of any foreign degree proffered by an alien. The Secretary of State may enter into contracts with public or private entities in conducting such verifications.

"(iii) In addition to any other fees authorized by law, the Secretary of State may impose a fee on an employer filing a petition under subsection (c)(1) initially to grant an alien nonimmigrant status described in section 101(a)(15)(H)(i)(b), if a determination or verification described in clause (i) or (ii) is required with respect to the petition. Fees collected under this clause shall be deposited in the Treasury in accordance with section 286(t).".

(B) H–1B EDUCATIONAL CREDENTIAL VERIFICATION ACCOUNT.—Section 286 of the Immigration and Nationality Act (8 U.S.C. 1356) is amended by adding at the end the following:

"(w) H–1B EDUCATIONAL CREDENTIAL VERIFICATION ACCOUNT.—There is established in the general fund of the Treasury a separate account, which shall be known as the 'H–1B Educational Credential Verification Account'. Notwithstanding any other provision of law, there shall be deposited as offsetting receipts into the account all fees collected under section 214(i)(4)(B)(iii). Amounts deposited into the account shall remain available to the Secretary of State until expended to carry out section 214(i)(4)(B).".

(2) INVESTIGATIONS.—The first sentence of subsection (n)(2)(F), and the first sentence of subsection (t)(3)(E) (as added by section 402(b)(2) of Public Law 108–77 (117 Stat. 941)), of section 212 of the Immigration and Nationality Act (8 U.S.C. 1182) are each amended by striking "investigations" and all that follows through the period at the end and inserting the following: "investigations. An employer who has been subject to 2 random investigations may not be subject to another random investigation within 4 years of the second investigation unless the employer was found in the previous investigations or otherwise to have committed a willful failure to meet a condition of paragraph (1) (or has been found under paragraph (5) to have committed willful failure to meet the

condition of paragraph (1)(G)(i)(II)) or to have made a willful misrepresentation of material fact in an application.".

(3) BONA FIDE BUSINESSES.—Section 214(c) of the Immigration and Nationality Act (8 U.S.C. 1184(c)) is amended by adding at the end the following:

"(15) The Secretary of Homeland Security may not approve any petition under paragraph (1) filed by an employer with respect to an alien seeking to obtain the status of a nonimmigrant under subclause (b) or (b1) of section 101(a)(15)(H)(i) and the Secretary of State may not approve a visa with respect to an alien seeking to obtain the status of a nonimmigrant under subparagraph (E)(iii) or (H)(i)(b1) of section 101(a)(15) unless—

"(A) the employer—

"(i) is an institution of higher education (as defined in section 101(a) of the Higher Education Act of 1965 (20 U.S.C. 1001(a))), or a governmental or nonprofit entity; or

"(ii) maintains a place of business in the United States that is licensed in accordance with any applicable State or local business licensing requirements and is used exclusively for business purposes; and

"(B) the employer—

"(i) is a governmental entity;

"(ii) has aggregate gross assets with a value of not less than $50,000—

"(I) in the case of an employer that is a publicly held corporation, as determined using its most recent report filed with the Securities and Exchange Commission; or

"(II) in the case of any other employer, as determined as of the date on which the petition is filed under regulations promulgated by the Secretary of Homeland Security; or

"(iii) provides appropriate documentation of business activity under regulations promulgated by the Secretary of Homeland Security.".

(4) SUBPOENA AUTHORITY.—

(A) H–1B APPLICATION.—Section 212(n)(2) of the Immigration and Nationality Act (8 U.S.C. 1182(n)(2)) is amended by adding at the end the following:

"(J) The Secretary of Labor is authorized to issue subpoenas as may be necessary to assure employer compliance with the terms and conditions of this subsection.".

(B) ATTESTATION WITH RESPECT TO OTHER NONIMMIGRANT EMPLOYEES.—Section 212(t)(3) of such Act (8 U.S.C. 1182(t)(3)) (as added by section 402(b)(2) of Public Law 108-77 (117 Stat. 941)) is amended by adding at the end the following:

"(G) The Secretary of Labor is authorized to issue subpoenas as may be necessary to assure employer compliance with the terms and conditions of this subsection.".

(e) B VISAS IN LIEU OF H–1B VISAS.—Section 214(g) of the Immigration and Nationality Act (8 U.S.C. 1184(g)) is amended by adding at the end the following:

"(12) Notwithstanding any other provision of this Act, any alien admitted or provided status as a nonimmigrant in order to provide services in a specialty occupation described in paragraph (1) or (3) of subsection (i) (other than services described in subparagraph (H)(ii)(a), (O), or (P) of section 101(a)(15)) or as a fashion model shall have been issued a visa (or otherwise been provided nonimmigrant status) under subclause (b) or (b1) of section 101(a)(15)(H)(i) or section 101(a)(15)(E)(iii).".

(f) EFFECTIVE DATES.—

(1) The amendments made by subsection (a) shall take effect on the date of the enactment of this Act and shall apply to aliens issued visas or otherwise provided with nonimmigrant status under section 101(a)(15)(H)(i)(b) of the Immigration and Nationality Act (8 U.S.C. 1101(a)(15)(H)(i)(b)) beginning in fiscal year 2014.

(2) The amendments made by subsection (b) shall take effect on the date of the enactment of this Act and shall apply to the spouses of aliens issued visas or otherwise provided with nonimmigrant status under subparagraph (H)(i)(b), (H)(i)(b1), or (E)(iii) of section 101(a)(15) of the Immigration and Nationality Act before, on, or after such date.

(3) The amendments made by paragraphs (1) and (3) of subsection (c) shall take effect on the date of the enactment of this Act and shall apply to petitions filed under section 214(c) of the Immigration and Nationality Act (8 U.S.C. 1184(c)) on or after such date and to visa applications filed on or after such date where no petition was filed because none was required under subparagraph (H)(i)(b1) or (E)(iii) of section 101(a)(15) of the Immigration and Nationality Act (8 U.S.C. 1101(a)(15)).

(4) The amendments made by paragraphs (2) and (4) of subsection (c) shall take effect on the date of the enactment of this Act and shall apply to employers of aliens issued visas or otherwise provided with nonimmigrant status under

subparagraph (H)(i)(b), (H)(i)(b1), or (E)(iii) section 101(a)(15) of the Immigration and Nationality Act (8 U.S.C. 1101(a)(15)) before, on, or after such date.

(5) The amendment made by subsection (d) shall take effect on the date of the enactment of this Act and shall apply to aliens admitted or provided status as nonimmigrants on or after such date.

SEC. 202. L VISAS.

(a) IN GENERAL.—Section 214(c)(2) of the Immigration and Nationality Act (8 U.S.C. 1184(c)(2)) is amended by adding at the end the following:

"(G)(i) An employer of an alien who will serve in a capacity for the employer involving specialized knowledge under section 101(a)(15)(L) for a cumulative period of time in excess of 6 months over a 2-year period—

"(I)(aa) except as provided in item (bb), will offer to the alien during the period of authorized employment wages that are at least—

"(AA) the actual wage level paid by the employer to all other individuals with similar experience and qualifications for the specific employment in question; or

"(BB) the prevailing wage level for the occupational classification in the area of employment, whichever is greater, based on the best information available; or

"(bb) if 80 percent or more of the employer's workers in the same occupational classification as the alien and in the same area of employment as the alien are United States workers (as defined in section 212(n)(4)), will offer to the alien during the period of authorized employment wages that are at least the actual wage level paid by the employer to all other individuals with similar experience and qualifications for the specific employment in question; and

"(II) will provide working conditions for such alien that will not adversely affect the working conditions of workers similarly employed.

"(ii) In complying with the requirements of clause (i), an employer may keep the alien on their home country payroll, and may take into account the value of wages paid by the employer to the alien in the currency of the alien's home country, the value of benefits paid by the employer to the alien in the alien's home country, employer-provided housing or housing allowances, employer-provided vehicles or transportation allowances, and other benefits provided to the alien as an incident of the assignment in the United States.

"(iii) The Secretary of Labor shall have the same investigatory and enforcement powers to ensure compliance with this subparagraph as are set forth in section 212(n)(2).".

(b) EFFECTIVE DATE.—The amendment made by subsection (a) shall take effect on the date of the enactment of this Act and shall apply to employers with respect to aliens issued visas or otherwise provided nonimmigrant status under section 101(a)(15)(L) of the Immigration and Nationality Act (8 U.S.C. 1101(a)(15)(L)) on or after such date.

SEC. 203. O VISAS.

(a) PORTABILITY OF O VISAS.—The first sentence of section 214(n)(1) of the Immigration and Nationality Act (8 U.S.C. 1184(n)(1)) is amended—

(1) by striking "section 101(a)(15)(H)(i)(b)" and inserting "subparagraphs (H)(i)(b) and (O)(i) of section 101(a)(15)"; and

(2) by inserting "under such sections" after "new employment".

(b) 3-YEAR WAIVER OF NEW O–1 CONSULTATIONS FOR ARTS AND MOTION PICTURES AND TELEVISION AND TRANSPARENCY FOR O–1 VISAS FOR MOTION PICTURES AND TELEVISION.—

(1) IN GENERAL.—Section 214(c)(3) of the Immigration and Nationality Act (8 U.S.C. 1184(c)(3)) is amended—

(A) by striking "Attorney General" each place such term appears and inserting "Secretary of Homeland Security"; and

(B) by striking the first two sentences of the matter that follows subparagraph (B) and inserting the following: "In the case of an alien seeking entry for a motion picture or television production, (i) any opinion under the previous sentence shall only be advisory, (ii) any such opinion that recommends denial must be in writing, (iii) in making the decision the Secretary of Homeland Security shall consider the exigencies and scheduling of the production, (iv) the Secretary of Homeland Security shall append to the decision any such opinion, and (v) upon making the decision, the Secretary of Homeland Security shall immediately provide a copy of the decision to the consulting labor and management organizations. The Secretary of Homeland Security shall provide by regulation for the waiver of the consultation requirement under subparagraph (A) in the case of aliens who have been admitted as nonimmigrants under section 101(a)(15)(O)(i) be-

cause of extraordinary ability in the arts or extraordinary achievement in motion picture or television production and who seek readmission to perform similar services within 3 years after the date of a consultation under such subparagraph provided that, in the case of aliens admitted because of extraordinary achievement in motion picture or television production, such waiver shall apply only if the prior consultations by the appropriate union and management organization were favorable or raised no objection to the approval of the petition.".

(2) EFFECTIVE DATE.—The amendment made by paragraph (1) shall take effect on the date of the enactment of this Act and shall apply to petitions filed under section 214(c) of the Immigration and Nationality Act (8 U.S.C. 1184(c)) on or after such date and to consultation decisions made before, on, or after such date.

SEC. 204. MEXICAN AND CANADIAN PROFESSIONALS.

Section 214(e) of the Immigration and Nationality Act (8 U.S.C. 1184(e)) is amended by adding at the end the following:

"(7)(A) An employer of a Mexican or Canadian professional under this subsection—

"(i)(I) except as provided in subclause (II), will offer to the alien during the period of authorized employment wages that are at least—

"(aa) the actual wage level paid by the employer to all other individuals with similar experience and qualifications for the specific employment in question; or

"(bb) the prevailing wage level for the occupational classification in the area of employment, whichever is greater, based on the best information available; or

"(II) if 80 percent or more of the employer's workers in the same occupational classification as the alien and in the same area of employment as the alien are United States workers (as defined in section 212(n)(4)), will offer to the alien during the period of authorized employment wages that are at least the actual wage level paid by the employer to all other individuals with similar experience and qualifications for the specific employment in question (but, in the case of an employer with more than 25 employees, in no event shall such wages be lower than the mean of the lowest one-half of wages surveyed pursuant to section 212(p)(5)); and

"(ii) will provide working conditions for such alien that will not adversely affect the working conditions of workers similarly employed.

"(B) The Secretary of Labor shall have the same investigatory and enforcement powers to ensure compliance with this paragraph as are set forth in section 212(n)(2).".

SEC. 205. H-1B1 AND E-3 VISAS.

Section 212(t)(1)(A)(i) of the Immigration and Nationality Act (8 U.S.C. 1182(t)(1)(A)(i)) (as added by section 402(b)(2) of Public Law 108-77 (117 Stat. 941)) is amended—

(1) by striking "; and" at the end and inserting "; or";

(2) by redesignating subclauses (I) and (II) as items (aa) and (bb), respectively;

(3) by striking "(i)" and inserting "(i)(I)";

(4) by inserting "except as provided in subclause (II)," before "is offering"; and

(5) by adding at the end the following:

"(II) if 80 percent or more of the employer's workers in the same occupational classification as the alien admitted or provided status under section 101(a)(15)(H)(i)(b1) or 101(a)(15)(E)(iii) and in the same area of employment as the alien admitted or provided status under section 101(a)(15)(H)(i)(b1) or 101(a)(15)(E)(iii) are United States workers (as defined in subsection (n)(4)), is offering and will offer during the period of authorized employment to aliens admitted or provided status under section 101(a)(15)(H)(i)(b1) or section 101(a)(15)(E)(iii) wages that are at least the actual wage level paid by the employer to all other individuals with similar experience and qualifications for the specific employment in question (but, in the case of an employer with more than 25 employees, in no event shall such wages be lower than the mean of the lowest one-half of wages surveyed pursuant to subsection (p)(5)); and".

SEC. 206. STUDENTS.

(a) DUAL INTENT.—

(1) IN GENERAL.—Section 101(a)(15)(F) of the Immigration and Nationality Act (8 U.S.C. 1101(a)(15)(F)) is amended to read as follows:

"(F) an alien—

"(i) who—

"(I) is a bona fide student qualified to pursue a full course of study in a field of science, technology, engineering, or mathematics (as defined in section 203(b)(6)(B)(ii)) leading to a bachelors or graduate degree and who seeks to enter the United States for the purpose of pursuing such a course of study consistent with section 214(m) at an institution of higher education (as described in section 101(a) of the Higher Education Act of 1965 (20 U.S.C. 1001(a))) or a proprietary institution of higher education (as defined in section 102(b) of such Act (20 U.S.C. 1002(b))) in the United States, particularly designated by the alien and approved by the Secretary of Homeland Security, after consultation with the Secretary of Education, which institution shall have agreed to report to the Secretary of Homeland Security the determination of attendance of each nonimmigrant student, and if any such institution fails to make reports promptly the approval shall be withdrawn; or

"(II) is engaged in temporary employment for optional practical training related to such alien's area of study following completion of the course of study described in subclause (I);

"(ii) who—

"(I) has a residence in a foreign country which the alien has no intention of abandoning, who is a bona fide student qualified to pursue a full course of study, and who seeks to enter the United States temporarily and solely for the purpose of pursuing such a course of study consistent with section 214(m) at an established college, university, seminary, conservatory, academic high school, elementary school, or other academic institution or in a language training program in the United States, particularly designated by the alien and approved by the Secretary of Homeland Security, after consultation with the Secretary of Education, which institution of learning or place of study shall have agreed to report to the Secretary of Homeland Security the determination of attendance of each nonimmigrant student, and if any such institution of learning or place of study fails to make reports promptly the approval shall be withdrawn; or

"(II) is engaged in temporary employment for optional practical training related to such alien's area of study following completion of the course of study described in subclause (I);

"(iii) who is the spouse or minor child of an alien described in clause (i) or (ii) if accompanying or following to join such an alien; or

"(iv) who is a national of Canada or Mexico, who maintains actual residence and place of abode in the country of nationality, who is described in clause (i) or (ii) except that the alien's qualifications for and actual course of study may be full or part-time, and who commutes to the United States institution or place of study from Canada or Mexico;".

(2) ADMISSION.—Section 214(b) of the Immigration and Nationality Act (8 U.S.C. 1184(b)), as amended by section 108(d)(1) of this Act, is further amended by striking "(L) or (V)" inserting "(F)(i), (L), or (V)".

(3) CONFORMING AMENDMENT.—Section 214(m)(1) of the Immigration and Nationality Act (8 U.S.C. 1184(m)(1)) is amended, in the matter preceding subparagraph (A), by striking "(i) or (iii)" and inserting "(i), (ii), or (iv)".

(b) OPTIONAL PRACTICAL TRAINING FOR FOREIGN STUDENTS.—Section 214 of the Immigration and Nationality Act (8 U.S.C. 1184) is amended by adding at the end the following:

"(s)(1) An employer providing optional practical training to an alien who has been issued a visa or otherwise provided nonimmigrant status under subparagraph (F) or (M) of section 101(a)(15) after completion of the alien's course of study—

"(A)(i) except as provided in clause (ii), shall offer to the alien during the period of optional practical training wages that are at least—

"(I) the actual wage level paid by the employer to all other individuals with similar experience and qualifications for the specific employment in question; or

"(II) the prevailing wage level for the occupational classification in the area of employment, whichever is greater, based on the best information available; or

"(ii) if 80 percent or more of the employer's workers in the same occupational classification as the alien and in the same area of employment as the alien are United States workers (as defined in section 212(n)(4)), shall offer to the alien during the period of authorized employment wages that are at least the actual wage level paid by the employer to all other individuals with similar experience

and qualifications for the specific employment in question (but, in the case of an employer with more than 25 employees, in no event shall such wages be lower than the mean of the lowest one-half of wages surveyed pursuant to section 212(p)(5)); and

"(B) shall provide working conditions for such alien that will not adversely affect the working conditions of workers similarly employed.

"(2) The Secretary of Labor has the same investigatory and enforcement powers to ensure compliance with paragraph (1) as are set forth in section 212(n)(2).".

(c) EFFECTIVE DATES.—

(1) The amendments made by subsection (a) shall take effect on the date of the enactment of this Act, and shall apply to nonimmigrants who possess or are granted status under section 101(a)(15)(F) of the Immigration and Nationality Act (8 U.S.C. 1101(a))(15)(F)) on or after such date.

(2) The amendment made by subsection (b) shall apply to employers with respect to aliens who begin post-course of study optional practical training with them on or after the date of the enactment of this Act.

SEC. 207. EXTENSION OF EMPLOYMENT ELIGIBILITY WHILE VISA EXTENSION PETITION PENDING.

(a) IN GENERAL.—Section 214 of the Immigration and Nationality Act (8 U.S.C. 1184, as amended by section 205(b), is further amended by adding at the end the following:

"(t) A nonimmigrant issued a visa or otherwise provided nonimmigrant status under subparagraph (A), (E), (G), (H), (I), (J), (L), (O), (P), (Q), or (R) of section 101(a)(15), or section 214(e), and otherwise as the Secretary of Homeland Security may by regulations prescribe, whose status has expired but who has, or whose sponsoring employer or authorized agent has, filed a timely application or petition for an extension of authorized status as provided under this section, is authorized to continue employment with the same employer for a period not to exceed 240 days beginning on the date of the expiration of the authorized period of stay until and unless the application or petition is denied. Such authorization shall be subject to the same conditions and limitations noted on the original authorization.".

(b) EFFECTIVE DATE.—The amendment made by subsection (a) shall take effect on the date of the enactment of this Act and shall apply to aliens issued visas or otherwise provided nonimmigrant status before, on, or after such date.

SEC. 208. FRAUD DETECTION AND PREVENTION FEE.

Section 214(c)(12)(A) of the Immigration and Nationality Act (8 U.S.C. 1184(c)(12)(A)) is amended by adding at the end the following:

"The Secretary of Homeland Security shall also impose the fee described in the preceding sentence on an employer filing an attestation under section 212(t)(1) or employing an alien pursuant to subsection (e).".

SEC. 209. TECHNICAL CORRECTION.

The second subsection designated as subsection (t) of section 212 of the Immigration and Nationality Act (8 U.S.C. 1182) (as added by section 1(b)(2)(B) of Public Law 108–449 (118 Stat. 3470)) is redesignated as subsection (u) of such section.

TITLE III—REFORMS AFFECTING BOTH IMMIGRANT AND NONIMMIGRANT VISAS

SEC. 301. PREVAILING WAGES.

(a) IN GENERAL.—Section 212(p) of the Immigration and Nationality Act (8 U.S.C. 1182(p)) is amended—

(1) in paragraph (1), by striking "subsections (a)(5)(A), (n)(1)(A)(i)(II), and (t)(1)(A)(i)(II)" and inserting "subsections (a)(5)(A), (n)(1)(A)(i)(II), and (t)(1)(A)(i)(II) of this section, and subsections (c)(2)(G), (e), and (s) of section 214,";

(2) by redesignating paragraphs (2) through (4) as paragraphs (3) through (5), respectively;

(3) by inserting after paragraph (1) the following:

"(2) In computing the prevailing wage level for an occupational classification in an area of employment for purposes of subsections (a)(5)(A), (n)(1)(A)(i)(II), and (t)(1)(A)(i)(II) of this section, and subsections (c)(2)(G), (e), and (s) of section 214, the wage level shall be the wage level specified in subparagraph (A), (B), or (C) of paragraph (5) depending on the experience, education, and level of supervision required for the position.";

(4) in paragraph (4) (as redesignated), by striking "subsections (a)(5)(A), (n)(1)(A)(i)(II), and (t)(1)(A)(i)(II)" and inserting "subsections (a)(5)(A), (n)(1)(A)(i)(II), and (t)(1)(A)(i)(II) of this section, and subsections (c)(2)(G), (e), and (s) of section 214,";

(5) by amending paragraph (5) (as redesignated) to read as follows:

"(5) Subject to paragraph (2), the Secretary of Labor shall make available to employers a governmental survey to determine the prevailing wage for each occupational classification by metropolitan statistical area in the United States. Such survey, or other survey approved by the Secretary of Labor, shall provide 3 levels of wages commensurate with experience, education, and level of supervision. Such wage levels shall be determined as follows:

"(A) The first level shall be the mean of the lowest two-thirds of wages surveyed, but in no case less than 80 percent of the mean of the wages surveyed.

"(B) The second level shall be the mean of wages surveyed.

"(C) The third level shall be the mean of the highest two-thirds of wages surveyed."; and

(6) by adding at the end the following:

"(6) An employer may use an independent authoritative survey approved by the Secretary of Labor for purposes of paragraph (5), if—

"(A) the survey data was collected within 24 months;

"(B) the survey was published within the prior 24 months;

"(C) the survey reflects the area of intended employment;

"(D) the employer's job description adequately matches the job description in the survey;

"(E) the survey is across industries that employ workers in the occupation;

"(F) the wage determination is based on the arithmetic mean (weighted average); and

"(G) the survey identifies a statistically valid methodology that was used to collect the data.".

(b) EFFECTIVE DATE.—The amendments made by subsection (a) shall take effect on the date of the enactment of this Act, and shall apply to employers with regard to labor certifications under sections 212(a)(5)(A) of the Immigration and Nationality Act (8 U.S.C. 1182(a)(5)(A)), labor condition applications under section 212(n)(1) of such Act (8 U.S.C. 1182(n)(1)), and attestations under section 212(t)(1) of such Act (8 U.S.C. 1182(t)(1)), filed on or after such date, to employers with regard to aliens issued visas or otherwise provided nonimmigrant status under section 101(a)(15)(L) of such Act (8 U.S.C. 1101(a)(15)(L)) on or after such date, and to employers with regard to aliens they provide post-course of study optional practical training that begins on or after such date.

SEC. 302. STREAMLINING PETITIONS FOR ESTABLISHED EMPLOYERS.

(a) IN GENERAL.—Section 214(c) of the Immigration and Nationality Act (8 U.S.C. 1184(c)), as amended by this Act, is further amended by adding at the end the following:

"(16) The Secretary of Homeland Security shall establish a pre-certification procedure for employers who file multiple petitions described in this subsection or section 204(a)(1)(F). Such precertification procedure shall enable an employer to avoid repeatedly submitting documentation that is common to multiple petitions and establish, through a single filing, criteria relating to the employer and the offered employment opportunity.".

(b) EFFECTIVE DATE.—The amendment made by subsection (a) shall take effect on the date of the enactment of this Act, and shall apply to petitions filed under section 204(a)(1)(F) or 214(c) of the Immigration and Nationality Act (8 U.S.C. 1154(a)(1)(F) or 1184(c)) beginning 180 days after such date.

Purpose and Summary

H.R. 2131 increases the economic competitiveness of the U.S. and the rationality of our immigration system by increasing the priority given to highly skilled immigrants and to nuclear family members in the issuance of immigrant visas, by creating an immigrant pathway for entrepreneurs, and by reforming our temporary work visa programs to increase the availability of the most talented foreign workers to American employers while strengthening protections for American workers and students.

Background and Need for the Legislation

I. OVERVIEW OF THE CURRENT U.S. SYSTEM OF SELECTING IMMIGRANTS

In fiscal year 2011, a total of 1,062,040 immigrants were granted legal permanent residence ("green cards").[1] Of these, two thirds were based on a family relationship with a relative in the United States. Specifically, 419,496 (40%) of the green cards issued went to nuclear family members (spouses and minor children) of U.S. citizens and permanent residents, and 268,593 (25%) were based on other family relationships with citizens and permanent residents.[2] Only 130,337 (12%) of green cards issued went to skilled workers and their nuclear family members (with about half going towards family members).[3] Another 50,103 (5%) of green cards issued went to aliens who won the diversity visa lottery and were admitted based on chance, without consideration of either family ties or skills.[4] Most of the remaining green cards—171,088 (16%)—included refugees, asylees and other aliens who demonstrated that they were eligible for relief from removal for humanitarian reasons.[5]

Presently, employment visas for permanent residence are issued in five employment-based preference categories, commonly referred to as E1, E2, E3, E4, and E5.[6]

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[1] *See* DHS, Office of Immigration Statistics, *2011 Yearbook of Immigration Statistics* at table 7 (2012).
[2] *See* Immigration and Nationality Act (INA) secs. 201(b)(2)(A)(i) and 203(a).
[3] *See* INA sec. 203(b).
[4] *See* INA sec. 203(c).
[5] *See* INA secs. 207, 208 and 240A.
[6] *See* INA sec. 203(b)(1)-(5).

Employment-Based Preference Immigrants		Worldwide Level 140,000
1st preference	Priority workers: persons of extraordinary ability in the arts, science, education, business, or athletics; outstanding professors and researchers; and certain multi-national executives and managers	28.6% of worldwide limit plus unused 4th and 5th preference
2nd preference	Members of the professions holding advanced degrees or persons of exceptional abilities in the sciences, art, or business	28.6% of worldwide limit plus unused 1st preference
3rd preference—skilled	Skilled shortage workers with at least two years training or experience, professionals with baccalaureate degrees	28.6% of worldwide limit plus unused 1st or 2nd preference
3rd preference—"other"	Unskilled shortage workers	10,000 (taken from the total available for 3rd preference)
4th preference	"Special immigrants," including ministers of religion, religious workers other than ministers, certain employees of the U.S. government abroad, and others	7.1% of worldwide limit; religious workers limited to 5,000
5th preference	Employment creation investors who invest at least $1 million (amount may vary in rural areas or areas of high unemployment) which will create at least 10 new jobs	7.1% of worldwide limit; 3,000 *minimum* reserved for investors in rural or high unemployment areas

The Immigration and Nationality Act generally provides that the total number of family-sponsored and employment-based immigrant visas made available to natives of any single foreign country in a year cannot exceed 7% of the total number of such visas made available in that year.[7] Because of annual caps on employment-based immigrant visas, the population size of certain countries and the large number of natives of those countries seeking immigrant visas to the U.S., the time it takes for visas to be available to natives of those countries may be much longer than it takes for natives of other countries.

For the employment-based first preference category (priority workers), immigrant visas are now available for all prospective immigrants with approved petitions. For the employment-based second preference category (members of the professions with advanced degrees and persons of exceptional ability), immigrant visas are generally now available for all prospective immigrants with approved petitions, but for nationals of China, the backlog is such that only those with application dates of September 2008 are being processed and for nationals of India, the date is June 2008. For the employment-based third preference category (skilled workers, pro-

[7] *See* INA sec. 202(a)(2), (c).

fessionals with bachelor's degrees and other workers), immigrant visas are now available for prospective immigrants whose petitions were first filed in July 2010, but for nationals of India, the date is September 2003 and for nationals of the Philippines, the date is December 2006 (and for other workers from China, the date is September 2004, from India the date is September 2003 and from the Philippines the date is December 2006). For the employment-based fourth preference category (special immigrants) and fifth preference category (investors), immigrant visas are now available for all prospective immigrants with approved petitions.[8]

There are about 300,000 prospective immigrants (not including spouses and minor children) with approved employment-based immigrant petitions.[9]

II. PRIORITY FOR HIGHLY-SKILLED FOREIGN WORKERS

The United States has the most generous legal immigration system in the world—providing permanent residence to over a million immigrants a year. Yet, we select only 12%—and that figure includes the immigrants' spouses and minor children—on the basis of the education and skills they bring to America. The three other main immigrant-receiving countries—Australia, Canada and the United Kingdom—select between 62 and 72% of their immigrants based on education and skills.[10] We select only a handful (less than 1%) on the basis of their entrepreneurial talents. And that is only if they already have the hundreds of thousands of dollars in personal assets needed to participate in the investor visa program.

Much of America's scientific workforce is composed of immigrants. The foreign-born constitute 19% of all persons with a bachelor's degree working in computer science and mathematics occupations in the U.S., 41% of those with master's degrees working in those occupations and 48% of those with doctorates working in those occupations; for the physical sciences, the figures are 17%/29%/37%; for engineering, the figures are 22%/38%/51%.[11]

The contributions of highly-skilled and educated immigrants to the United States are well-documented. For example:

- Seventy-six percent of the patents awarded to our top patent-producing universities had at least one foreign-born inventor.[12] These foreign-born inventors "played especially large roles in cutting edge fields" such as semiconductor device manufacturing, information technology, pulse or digital communications, pharmaceutical drugs or drug compounds and optics.[13]
- At over one-quarter of engineering and technology startups, at least one key founder is foreign-born (in Silicon Valley,

[8] U.S. State Department, *Visa Bulletin for October 2013* (2013).

[9] Information provided by U.S. Citizenship and Immigration Services.

[10] *See* Department of Immigration and Citizenship, Australian Government, *Trends in Migration: Australia 2010–11* at table 2.1; Department of Immigration and Citizenship, Australian Government, *Country Profile: United Kingdom;* Citizenship; and Immigration Canada, Government of Canada, *Backgrounder—2013 Immigration Levels Planning: Public and Stakeholder Consultations* at annex D.

[11] *See* National Science Foundation, *Science and Engineering Indicators 2010* table 3–24 (figures are for 2003).

[12] *See* the Partnership for a New American Economy, *Patent Pending: How Immigrants are Reinventing the American Economy* 1 (2012).

[13] *Id.*

over half of such companies have at least one key foreign-born founder).[14]

- An additional 100 immigrants with advanced STEM (science, technology, engineering and mathematics) degrees from U.S. universities are associated with an additional 262 jobs for natives. Immigrants with advanced degrees pay over $22,000 a year in federal, state and Social Security taxes yet their families receive less than $2,300 in benefits from major government programs.[15]

Given the outstanding track record of immigrants in founding some of our most successful companies and in providing much of the crucial scientific talent needed for our economy to prosper, our current immigration system does not make sense. This is especially true, given the intense international economic competition that America faces. Attracting the world's best and brightest is decidedly in the best interest of all Americans. Today, talented individuals have many options worldwide as to where to relocate. America needs to regain its place as the number one destination for the world's top talent.

Of course, at the same time, we need to ensure that whatever we do brightens rather than darkens the career prospects of American students and American workers. We need to ensure that we don't discourage young Americans from entering STEM fields in the first place and that we do not undercut the wages of American workers.

In furtherance of these goals, H.R. 2131 allocates up to 55,000 immigrant visas a year for employers to petition for foreign graduates of U.S. universities with advanced degrees in STEM fields, allocates up to 10,000 green cards a year for alien entrepreneurs who can attract investment from venture-capital firms or angel investors to establish businesses that will create at least five jobs or have already created five jobs over 10 years through the E-2 treaty investor program and allocates an additional 15,000 green cards a year to the employment-based second preference category for members of the professions with advanced degrees and persons of exceptional ability and an additional 15,000 green cards a year for the third preference category for skilled workers and professionals with bachelor's degrees. In addition, the bill increases the H-1B visa cap for high-skilled workers to 155,000 a year and increases the special pool of visas for foreign graduates of U.S. universities to 40,000.

III. STEM IMMIGRANT VISAS

Of all the immigrant scientists and engineers in the U.S., 38.7% earned all their college degrees in the U.S., 42.6% earned them all overseas, and 18.7% earned them in the U.S. and abroad; 51.1% have bachelor's degrees, 30.2% have master's degrees, 9.4% have doctorates and 9.3% have professional degrees.[16] Many of the world's top students come to the U.S. to obtain advanced STEM degrees. Talented students from around the world receive nearly four

[14] *See* Vivek Wadhwa, AnnaLee Saxenian, Ben Rissing & Gary Gereffi, *America's New Immigrant Entrepreneurs,* 2007 Duke School of Engineering and the University of California at Berkeley School of Information at 4, 31 (companies started in the years 1995–2005).

[15] *See* Madeline Zavodny, *Immigration and American Jobs,* 2011 American Enterprise Institute for Public Policy Research and the Partnership for a New American Economy at 8, 12.

[16] *See* National Science Foundation, *Why Did They Come to the United States? A Profile of Immigrant Scientists and Engineers* at table 3 (for the year 2003)(2007).

out of every 10 STEM master's degrees and doctorates granted by U.S. universities. In 2011, aliens on temporary visas received 32,972 STEM master's degrees from U.S. universities (37% of a total of 89,628) and 10,604 STEM doctorates (38% of a total of 28,149).[17]

But what happens to these foreign students after they graduate? Commentators have argued that:

> [T]he United States has benefitted immensely from, and is highly dependent upon, foreign-born individuals talented in science and engineering who elect to study in the United States and decide to remain here after completing their education. It probably would not be an overstatement to assert that America's science and engineering enterprise would barely function without these talented contributors. . . . Yet, United States immigration policy in many cases discourages qualified individuals from studying in the United States or remaining here after graduation.[18]

Scholar Vivek Wadhwa has recently testified before the Judiciary Committee that:

> Foreign students graduating from American colleges have difficulty in finding jobs because employers have difficulty in getting H1-B visas. Those graduates who are lucky enough to get a job and a visa and who decide to make the U.S. their permanent home find that it can take years—sometimes more than a decade—to get a green card. If they have ideas for building world-changing technologies and want to start a company, they are usually out of luck, because it is not usually possible for people on H1-B visas to work for the companies they might start. The families of would-be immigrants are also held hostage to the visa-holder's immigration status. The spouses of H1-B workers are not allowed to work, and, depending on the state in which they live, they may not even be able to get a driver's license or open a bank account. They are forced to live as second-class citizens. Not surprisingly, many are getting frustrated and returning home. We must stop this brain drain and do all we can to bring more engineers and scientists here.[19]

How many foreign graduates of U.S. STEM programs remain in the U.S.? Sixty-seven percent of aliens on temporary visas who received science and engineering doctorates in 2005 were still in the U.S. in 2007 (with a high of 76% for those with computer and electrical and electronics engineering doctorates).[20] Sixty-two percent of aliens on temporary visas who received science and engineering doctorates in 2002 were still in the U.S. in 2007 (with a high of 75% for those with computer science doctorates).[21] For 1997 doctor-

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[17] Information provided by the National Science Foundation.

[18] Members of the 2005 "Rising Above the Gathering Storm" Committee, *Rising Above the Gathering Storm Revisited: Rapidly Approaching Category 5*, 53–54 (2010).

[19] *America's Immigration System: Opportunities for Legal Immigration and Enforcement of Laws against Illegal Immigration: Hearing Before the House Comm. on the Judiciary*, 113th Congress (2013).

[20] *See* Michael Finn, *Stay Rates of Foreign Doctorate Recipients from U.S. Universities, 2007,* 2010 Oak Ridge Institute for Science and Education at 5.

[21] *See id.*

ates, the "stay rate" was 60%.[22] A survey of foreign students measuring the desire to stay in the U.S. after graduation found that:[23]

- Asked if they would like to stay in the U.S. after graduation if given a chance, 58% of Indian students indicated they would, as did 54% of Chinese students and 40% of European students.[24]
- Asked how long they would like to stay in the U.S. after graduation, 55% of Indians, 40% of Chinese and 30% of Europeans said 1 to 5 years; 16% of Indians, 13% of Chinese and 12% of Europeans said 6 to 10 years; 3% of Indians, 5% of Chinese, and 3% of Europeans said 11 or more years; and 6% of Indians, 10% of Chinese and 15% of Europeans said permanently.[25]
- When asked whether they thought it would be difficult to find a job in the U.S., 84% of Indians thought it would be from somewhat to extremely difficult, as did 76% of Chinese and 69% of Europeans.[26]
- When asked about whether they had concerns about obtaining work visas, 85% of Indians were from somewhat to extremely concerned, as were 85% of Chinese and 72% of Europeans.[27]
- When asked if they were concerned about obtaining permanent residency in the U.S., 37% of Indians were from somewhat to extremely concerned, as were 65% of Chinese and 53% of Europeans.[28]
- When asked whether the U.S., their home country or another country had the best job opportunities, 47% of Indians said the U.S. (32% said India), as did 27% of Chinese (52% said China) and 47% of Europeans (26% said their home country).[29]
- Of those interested in starting a business, 55% of Indians said the likely location was in India while 18% said it was in the U.S.; 53% of Chinese said the likely location was in China while 19% said it was in the U.S; and 35% of Europeans said the likely location was in their home country while 18% said it was in the U.S.[30]

Under the current system, we educate scientists and engineers only to all too often send them home to work for our competitors abroad. We could boost economic growth and spur job creation by allowing American employers to more easily hire some of the best and brightest foreign graduates of U.S. universities. Therefore, H.R. 2131 allocates up to 55,000 immigrant visas a year for employers to petition for foreign graduates of U.S. universities with advanced degrees in STEM fields.

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[22] *See id.* at 8.
[23] *See* Vivek Wadhwa, AnnaLee Saxenian, Richard Freeman, and Alex Salkever, *Losing the World's Best and Brightest: America's New Immigrant Entrepreneurs, Part V* (2009).
[24] *See id.* at 9.
[25] *See id.*
[26] *See id.*
[27] *See id.* at 10.
[28] *See id.*
[29] *See id.* at 11.
[30] *See id.* at 15.

However, we must ensure that a STEM immigrant visa program does not encourage diploma mills. The State Department has testified before the Judiciary Committee that foreign students have been used by universities to bolster marginal programs:

> [A] school in the United States can be found for even the poorest academic achiever. . . . Unfortunately, schools that actively recruit foreign students for primarily economic reasons, and without regard to their qualifications or intentions, may encourage such high-risk underachievers to seek student visa status as a ticket into the United States.[31]

And the Center for Technology Innovation at Brookings warns against "inducing the enrollment of poor-quality foreign students in U.S. higher education institutions simply to obtain green cards."[32]

The Australian experience provides a cautionary tale:

> By 2008, there was overwhelming evidence that Australia's permanent entry migration program was in disarray. The core of the problem lay with the very large number of applicants who had come in on student visas, completed Australian qualifications and were succeeding in gaining permanent residence status on completion of their studies. Paradoxically, these outcomes were a product of reforms in 1999 and 2001 which were intended to deliver migrants with high-level skills, especially in areas where shortages were evident. . . . There are many lessons to be learned from this story about how migration selection mistakes can morph into major crises. . . . [T]he second key reform was the establishment, beginning in mid-2001, of skilled visa subclasses for overseas students who had completed trade or higher-education qualifications in Australia. . . . The reformers did not anticipate the alacrity with which Australia's universities . . . would set up courses designed to attract international students looking for the cheapest and easiest ways to obtain qualifications in occupations that could lead to permanent residence. . . . By 2005, there were so many applications for permanent residence from former overseas students that the Department of Immigration and Citizenship had to increase the selection system pass mark. . . . After this, the possession of a Migrant Occupations in Demand List occupation, and the extra points it delivered, become a crucial determinant of permanent residence outcomes. IT and accounting were to become the study areas of choice for overseas students taking higher education courses who were interested in a permanent residence outcome. All they had to do was complete a 2-year Masters course in IT or accounting (with no prerequisite study or experience in these fields needed) at any Australian university and permanent residence was assured. . . . The year 2008 was a bad one

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[31] *Nonimmigrant Visa Fraud: Hearing Before the Subcomm. on Immigration and Claims of the House Comm. on the Judiciary*, 106th Cong. 29 (1999)(statement of Nancy Sambaiew, Deputy Assistant Secretary for Visa Services, Bureau of Consular Affairs, U.S. State Department).

[32] Zoltan Acs and David Hart, *Immigration and High-Impact, High-Tech Entrepreneurship*, 2011 Center for Technology Innovation at Brookings at 7.

> for the international student industry. Concerns about the quality of instruction in universities . . . and about the extent to which students were basing their choice of educational provider on the likely permanent residence outcomes, spread into the mainstream media. The result was a popular image that the industry was about selling education for visas. This perception was shredding its credibility.[33]

H.R. 2131 includes a number of requirements for foreign STEM graduates from U.S. universities (including requirements regarding the universities they graduate from) in order for them to be eligible for the STEM immigrant visa programs. These requirements are designed to discourage diploma mills and to ensure that visas go to the most talented foreign students. Foremost among them is the requirement that their schools be designated by the Carnegie Institute for the Advancement of Teaching as schools with a high or very high level of research activity (or later selected by the National Science Foundation). The Carnegie Institute has put together a list of universities that meet the threshold requirement of awarding at least 20 research doctorates in 2008–09. These "[d]octorate-granting institutions were assigned to one of three categories [basic, high research and very high research] based on a measure of research activity. . . . The analysis examined . . . research & development (R&D) expenditures in science and engineering; R&D expenditures in non-S&E fields; S&E research staff . . . doctoral conferrals in humanities fields, in social science fields, in STEM . . . fields, and in other fields. . . ." [34] University of Oklahoma President David Boren has stated that "[t]he Carnegie Classification is one of the most important measures that distinguish among institutions of higher education." [35]

Additionally, H.R. 2131 does not simply provide for immigrant visas to be "stapled" to diplomas. Instead, employers must petition for visas for graduates. The immediate provision of an immigrant visa to a graduate eliminates an advantage of the current "pathway" system—in which graduates typically receive H-1B visas and their employers then decide whether to petition for immigrant visas for them. The benefit of the current pathway is that aliens only receive immigrant visas after they prove themselves strong assets to their employers—graduates who turn out to be mediocre or poor performers simply don't get sponsored.[36]

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[33] Bob Birrell and Ernest Healy, *The February 2010 Reforms and the International Student Industry*, 18 People and Place 65–66, 70 (2010).

[34] *See* Carnegie Foundation for the Advancement of Teaching website (Methodology, Basic Classification).

[35] University of Oklahoma, *OU Makes State History in Receiving Carnegie Foundation's Very High Research Classification*, Jan. 26, 2011.

[36] The Government Accountability Office has found that:

> [D]ata on a cohort of approved H-1B workers whose petitions were submitted between January 1, 2004, and September 30, 2007, . . . indicate that a substantial proportion subsequently applied for permanent residence in the United States. Specifically, from a cohort of 311,847 approved H-1B petitions, we were able to obtain unique matches for 169,349 petitions from Homeland Security's US-VISIT data. Of these, GAO found that 56,454 of the individuals listed on these H-1B petitions had submitted a petition for permanent residence by 2010. Thus, at least 18 percent of the total cohort had applied for permanent residence by 2010 [which are actually submitted by the employer].

See U.S. Government Accountability Office, *H-1B Visa Program: Reforms Are Needed to Minimize the Risks and Costs of Current Program* at 35–36 (footnote omitted)(2011).

H.R. 2131 is also designed to protect the career prospects of American STEM students and STEM workers. Harvard economist George Borjas has found that "an immigration-induced 10% increase in the supply of doctorates in a particular field at a particular time reduces the earnings of that cohort of doctorates by about 3 to 4%."[37] Therefore, employers seeking to petition for STEM graduates for immigrant visas must first successfully complete labor certification (unless this requirement is waived in the national interest by DHS).

It is not enough that an employer simply make a job offer to a STEM graduate. Labor certification is a process designed to ensure that there are not sufficient American workers who are able, willing, qualified and available for the job for which an employer seeks the alien worker.[38] It includes required recruitments efforts for American workers, including advertising for American job applicants[39] and only rejecting them for lawful job-related reasons.[40] Labor certification discourages fraud through job offers by bogus companies or companies who have no plans to actually hire the alien, such as by requiring that an employer demonstrate the financial means to pay the alien.[41] Importantly, it also requires that an employer employ an alien in a job justifying their STEM education.[42]

IV. PRIORITY FOR NUCLEAR FAMILY MEMBERS

The following chart describes our legal immigration system for family members of U.S. citizens and permanent residents:

[37] George Borjas, *Immigration in High-Skill Labor Markets: The Impact of Foreign Students on the Earnings of Doctorates*, 2006 National Bureau of Economic Research at 31.

[38] *See* INA sec. 212(a)(5)(A).

[39] *See* 20 C.F.R. sec. 656.17(e)

[40] *See* 20 C.F.R. sec. 656.10(c)(9).

[41] *See* 20 C.F.R. sec. 656.10(c)(3).

[42] Currently, an employer must show that the job for which they want to hire an alien must require the bachelor's or advanced degree that makes the alien eligible for a second or third preference employment-based green card. *See* 8 C.F.R. sec. 204.5(k)(4)(i), (l)(3)(i)(For second preference petitions, "[t]he job offer portion of the individual labor certification . . . must demonstrate that the job requires a professional holding an advanced degree or the equivalent or an alien of exception ability." For third preference petitions, "[t]he job offer portion of the individual labor certification . . . for a professional must demonstrate that the job requires the minimum of a baccalaureate degree.").

Category		Numerical limit
Total Family-Sponsored Immigrants		**480,000**
Immediate relatives	Aliens who are the spouses and unmarried minor children of U.S. citizens and the parents of adult U.S. citizens	Unlimited
Family-sponsored Preference Immigrants		**Worldwide Level 226,000**
1st preference	Unmarried sons and daughters of citizens	23,400 plus visas not required for 4th preference
2nd preference	(A) Spouses and children of LPRs (B) Unmarried sons and daughters of LPRs	114,200 plus visas not required for 1st preference
3rd preference	Married sons and daughters of citizens	23,400 plus visas not required for 1st or 2nd preference
4th preference	Siblings of citizens age 21 and over	65,000 plus visas not required for 1st, 2nd, or 3rd preference

For the family-sponsored first preference category (unmarried adult sons and daughters of U.S. citizens), immigrant visas are now available for prospective immigrants whose petitions were first filed in October 2006, but for nationals of Mexico the date is September 1993 and for nationals of the Philippines the date is June 2001. For the family-sponsored second "A" preference category (spouses and unmarried minor children of permanent residents), immigrant visas are available with filing dates of September 2013. For the family-sponsored second "B" preference category (unmarried adult sons and daughters of permanent residents), immigrant visas are available with filing dates of March 2006, but for nationals of Mexico the date is March 1994 and for nationals of the Philippines the date is February 2003. For the family-sponsored third preference category (married sons and daughters of U.S. citizens), immigrant visas are available with filing dates of January 2003, but for nationals of Mexico the date is May 1993 and for nationals of the Philippines the date is January 1993. For the family-sponsored fourth preference category (brothers and sisters of U.S. citizens), immigrant visas are available with filing dates of August 2001, but for nationals of Mexico the date is October 1996 and for nationals of the Philippines the date is March 1990.[43]

We must set priorities in determining how to allocate immigrant visas. After all, Gallup surveys suggest that more than 165 million adults worldwide would like to move permanently to the U.S. if they had the chance.[44] When we set priorities, retaining a category for the siblings of U.S. citizens simply does not make sense. Former Florida Governor Jeb Bush recently argued that:

> The driver of immigration policy is "chain migration." Since the 1960's, the vast majority of legal immigrants have come pursuant to a very broad definition of "family

[43] *See* U.S. State Department, *Visa Bulletin for October 2013* (2013).
[44] *See* Neli Esipova and Julie Ray, *7700 Million Worldwide Desire to Migrate Permanently,* 2009 Gallup.

> reunification"—which includes not only spouses and minor children but . . . siblings. Family preferences account for two-thirds of all legal immigrants, crowding out work-based immigration and placing increased pressure on social services. When extended family members obtain legal status, they too are entitled to family preferences. This chain migration does not promote the nation's economic interests.[45]

The U.S. Commission on Immigration Reform found that:

> Immigration supports a national interest in promoting strong and intact nuclear families—that is, the basic social unit consisting of parents and their dependent children living in one household. Immigration contributes to this national interest by permitting the unification of close family members of U.S. citizens and permanent residents. . . . Current immigration policy fails to prioritize family relationships, permitting lengthy separations of some of the closest family members—spouses and minor children—while less close relatives continue to enter. . . . Unless there is a compelling national interest to do otherwise, immigrants should be chosen on the basis of the skills they contribute to the U.S. economy. While the admission of nuclear family members . . . provide such a compelling national interest, reunification of . . . siblings of adult citizens do not reach that level.[46]

Even the concept of family-reunification is meaningless in the context of immigrant visas for siblings. As the Commission found, "the extraordinarily large waiting list for siblings of U.S. citizens . . . undermines the integrity of the legal immigration system. . . . [E]xtended waiting periods [of a decade or more] mean that most siblings enter well into their working lives, limiting the time during which they can make a contribution to the U.S. economy."[47]

Therefore, H.R. 2131 allocates an additional 25,000 immigrant visas a year to the spouses and minor children of permanent residents and repeals the siblings of U.S. citizens immigrant visa category. However, there are many individuals who have already been approved for sibling green cards who have been patiently and legally waiting in line for many years for immigrant visas to become available. Therefore, the bill provides that aliens with approved sibling petitions can continue to receive immigrant visas under the program for the next decade. This will ensure that those persons who have been waiting the longest will be able to receive their immigrant visas.

V. THE DIVERSITY VISA LOTTERY

American immigration policy should be based on selecting immigrants who will benefit the U.S. economy and on reunifying fami-

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[45] Jeb Bush and Clint Bolick, *Solving the Immigration Puzzle*, Wall Street Journal, Jan. 24, 2013.

[46] U.S. Commission on Immigration Reform, *Legal Immigration: Setting Priorities* 45, 47, 72 (1995).

[47] U.S. Commission on Immigration Reform, *Becoming an American: Immigration and Immigration Policy* 66 (1997).

lies and providing refuge to the persecuted. However, the diversity visa program allocates up to 55,000 immigrant visas a year simply by a computer-generated random drawing. Admitting immigrants based solely on luck does nothing to serve the national interest and is not fair to those intending immigrants who must wait years, and sometimes decades, in order to immigrate through other legal channels. The diversity visa program is also subject to widespread fraud and raises significant national security concerns. The Judiciary Committee's report from the 112th Congress on H.R. 704, the "Safe for America Act," describes in detail the Committee's concerns with the diversity program.[48]

H.R. 2131 repeals the diversity visa program.

VI. INVESTOR VISAS

Under the investor visa program, almost 10,000 immigrant visas are available each year to aliens who 1) establish a new business[49] in the United States, 2) invest $1,000,000 in the business ($500,000 if the business is located in a rural area or an area of high unemployment), and 3) see that business create 10 full-time jobs for American workers.[50] Approved investors receive conditional immigrant visas, and DHS determines after 2 years whether the investors have fulfilled their obligations under the program, in which case they receive unencumbered immigrant visas.[51]

Spending associated with the investor visa program contributes an estimated $1.3 billion to our gross domestic product and supports over 16,000 U.S. jobs each year.[52] Especially in times of economic hardship and recovery, this has been a tremendous boon to our economy.

In 1993, Congress created a pilot project that sets aside 3,000 of the investor visas each year for aliens who invest in "designated regional centers."[53] A regional center "shall have jurisdiction over a limited geographic area . . . consistent with the purpose of concentrating pooled investment in defined economic zones" with the goals of "the promotion of economic growth, including increased export sales, improved regional productivity, job creation, or increased domestic capital investment."[54]

A regional center investor does not have to start their own business, but can invest in a pre-existing large-scale project along with many other foreign investors seeking immigrant visas. In addition, the regional center can "establish reasonable methodologies for determining the number of jobs created . . . including such jobs which are estimated to have been created indirectly through revenues generated from increased exports, improved regional productivity, job creation, or increased domestic capital invest-

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[48] *See* H.R. Rep. No. 112–275 (2011).

[49] Establishment of a new business can include the creation of a new business, the purchase and restructuring or reorganizing of an existing business, or the expansion of an existing business so that a substantial change in the net worth or number of employees results. *See* 8 C.F.R. sec. 204.6. An investor can also invest in a "troubled business." *See id.*

[50] *See* INA sec. 203(a)(5)(A), (C). An investor in a troubled business does not need to create 10 new jobs but rather show that the number of employees is maintained at the pre-investment level for 2 years. *See* 8 C.F.R. sec. 204.6(j)(4)(ii).

[51] *See* INA sec. 216A.

[52] *See* David Kay, Jenny Thorvaldson, Scott Lindall, *Economic Impacts of the EB-5 Immigration Program: 2010–2011,* 2013 MIG, Inc. at 25 (table 11).

[53] *See* Pub. L. No. 102–395, Title VI, sec. 610 (INA sec. 203 note).

[54] *Id.*

ment. . . .”[55] U.S. Citizenship and Immigration Services (“USCIS”) states that “[f]or Regional Center petitions and for purposes of indirect job creation, USCIS officers may consider economic models that rely on certain variables to show job creation and the amount of investment to determine whether the required infusion of capital or creation of direct jobs will result in a certain number of indirect jobs.”[56]

H.R. 2131 permanently authorizes the regional center pilot program. It also makes a number of important reforms to the investor visa program, three of which are discussed here.

First, the bill indexes the minimum investment requirements for inflation. The minimum investment amounts under the investor visa program have not been increased in the more than two decades that the program has been in operation. DHS has authority to adjust the amounts for inflation.[57] However, it has never done so, even though the USCIS director has stated that “[w]e agree that upward adjustment of the EB-5 capital requirements may be warranted.”[58] Thus, the value of investments under the program to the U.S. economy has fallen by almost half since Congress created the program in 1990. In Canada, the minimum investment amount for the investor visa program is about $776,000 in U.S. dollars, and in Australia, it is about $1,450,000 in U.S. dollars.[59]

H.R. 2131 increases the minimum investment amounts to reflect the change in value of the dollar from the program’s creation in 1990 to the present day and prospectively indexes the amounts for future inflation. Indexing will both maximize the positive impact of the investor visa program on the U.S. economy and it will ensure that the precious commodities of permanent residence in the U.S. and future citizenship are properly valued.

Second, the bill discourages the practice of “gerrymandering.” In order to encourage investments in rural areas and areas with high unemployment, Congress provided that an investor can qualify for the investor visa program by investing a lower amount of $500,000 in a “targeted employment area”—a rural area or an area that has an unemployment rate of at least 150% of the national rate.[60]

Unfortunately, the desire to procure investor visas for the cheapest price possible has led to abuse:

> [D]evelopers are often relying on gerrymandering techniques to create development zones that are supposedly in areas of high unemployment . . . but actually are in prosperous ones. . . . One of the more prominent projects is a 34-story glass tower in Manhattan that is to cost $750 million, one-fifth of which is to come from foreign investors seeking green cards. Called the International Gem Tower, it is rising near Fifth Avenue in the diamond district of Manhattan, one of the wealthiest areas in the country. Yet through the selective use of census statistics, state officials

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[55] *Id.*

[56] *EB-5 Alien Entrepreneurs—Job Creation and Full-Time Positions (AFM Update AD 09–04)*, Memorandum from Donald Neufeld, Acting Associate Director, Domestic Operations, USCIS, to Service Sector Directors, Regional Directors, District Directors, Field Office Directors, and National Benefit Center Director 2 (June 17, 2009).

[57] *See* INA sec. 203(a)(5)(C)(i).

[58] Letter from Alejandro Mayorkas, Director, USCIS, to Senators Patrick Leahy and Charles Grassley 1 (July 26, 2012).

[59] Information provided by the Global Legal Research Center of the Law Library of Congress.

[60] *See* INA sec. 203(a)(5)(B).

> have classified the area as one plagued by high unemployment. . . . [Our] review of the program in New York indicates that several other major projects are also based on questionable maps.[61]

DHS's interpretation of its current regulations require it to accept as binding a state's determination of a high unemployment area, even if DHS believes that there is clear evidence of abuse.[62] USCIS's Administrative Appeals Office has found in a case that:

> [I]t is clear that the petitioner's investment of only $500,000 wholly within a ward that is not itself suffering high unemployment completely undermines . . . congressional intent . . . that the reduced investment amount would encourage investment in areas that are truly suffering high unemployment. While we are bound by [the regulation], it would appear that this regulation has produced unintended consequences that are clearly contrary to congressional intent.[63]

USCIS Director Mayorkas admitted that he is "disturbed by reports that some states are deliberately drawing [targeted employment areas] to include prosperous areas that should not be subject to the reduced capital requirements that Congress intended only for the benefit of rural areas or areas suffering high unemployment."[64]

In order to prevent the evasion of the congressional goal of encouraging investments in rural areas and areas with high unemployment through the lowered investment amount, H.R. 2131 takes a number of steps including providing that DHS is not bound by the decision of any other entity if it believes that abuse has occurred, and can reject an abusive determination.

Third, the bill provides that investors can only receive unencumbered immigrant visas if their investments have met the primary goal of the investor visa program—the actual creation of jobs for American workers. Currently, in order to have the conditional status of their permanent residence removed, alien investors must provide evidence that they "created or can be expected to create within a reasonable time ten full-time jobs."[65] USICS policy is that:

> The regulations require that the business plan submitted with [the investor's petition] establish a likelihood of job creation "within the next 2 years," 8 C.F.R. sec. 204.6(j)(4)(i)(B), demonstrating an expectation that EB-5

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[61] Patrick McGeehan and Kirk Semple, *Rules Stretched as Green Cards Go to Investors*, New York Times, Dec. 18, 2011.

[62] *See* 8 C.F.R. sec. 204.6(i) and e-mail from USCIS to House Judiciary Committee staff, June 10, 2013 ("Under the regulations, the relevant question is the rate of unemployment in the area designated by a State. As long as the area designated by the State meets the regulatory criteria of being a particular geographic or political subdivision within a metropolitan statistical area or town having a population of 20,000 or more, the regulations do not permit USCIS to further examine a State's subjective intentions in designating an area as a TEA, the shape of the area, the reason for designating this area as opposed to others, the pattern of unemployment rates within various parts of the area, or other considerations that might be viewed as coming under the term 'gerrymandering.' USCIS instead examines only whether the area meets the minimum unemployment rate that the statute expressly sets as a qualifier for TEA designation.").

[63] Decision of Sept. 21, 2010, name withheld, at n.1.

[64] Letter from Alejandro Mayorkas, Director, USCIS, to Senators Patrick Leahy and Charles Grassley 1 (July 26, 2012).

[65] 8 C.F.R. sec. 216.6(a)(4)(iv).

> projects will generally create jobs within such a timeframe. Whether a lengthier timeframe for job creation presented in [the petition to remove the conditional status] is "reasonable" is to be decided based on the totality of the circumstances presented, and USCIS has latitude under the law to request additional evidence concerning those circumstances. Because the law contemplates 2 years as the baseline expected period in which job creation will take place, jobs that will be created within a year of the 2-year anniversary of the alien's admission as a conditional permanent resident or adjustment to conditional permanent resident may generally be considered to be created within a reasonable period of time. Jobs projected to be created beyond that time horizon usually will not be considered to be created within a reasonable time, unless extreme circumstances, such as *force majeure,* are presented.[66]

However, USCIS believes that to establish that jobs reasonably can be expected to be created, it only has to be determined that the jobs "are more likely than not going to be created."[67] Immigrant visa status is not revoked should the jobs never be created. H.R. 2131 requires that the jobs actually be created in order for conditional status to be removed.

VII. ENTREPRENEUR VISAS

Over half of Silicon Valley startups have an immigrant as a key founder. Yet current immigration law provides no dedicated mechanism to allow such entrepreneurs to stay in the country other than through the investor visa program. H-1B and L visas provide potential avenues for some entrepreneurs, but the visas are so restricted that many entrepreneurs would rather start companies in their own countries than navigate complex H-1B and L visa requirements.

Commentators have therefore called for the creation of an immigrant visa for entrepreneurs—a "start-up" visa:

> Immigrants who come here to create companies create jobs. We need the jobs. . . . One good idea to make this process easier is to create a new visa for entrepreneurs, something that is increasingly being called by venture capitalists, entrepreneurs, and angel investors a "start-up visa." It might work like this: If immigrant entrepreneurs want to start a company in the U.S. and are able to raise a moderate amount of money . . . from an accredited U.S.-based venture capital firm or qualified U.S.-based angel investors, we should let them start a company here. It could be a couple of founders with an idea—that's it. We would give visas to the founders and welcome them in to our country.[68]

Just as the investor visa program attracts immigrant investors who make significant financial investments in projects that will

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[66] *EB-5 Adjudications Policy*, USCIS Memorandum 22 (May 30, 2013).

[67] *EB-5 Alien Entrepreneurs—Job Creation and Full-Time Positions (AFM Update AD 09–04)* at 7.

[68] Paul Kedrosky and Brad Feld, *Start-up Visas Can Jump Start the Economy*, Wall Street Journal, Dec. 2, 2009.

create jobs for U.S. workers, a "start-up" visa will create U.S. jobs. Rather than attracting immigrant investors with financial capital, the program attracts immigrant entrepreneurs with intellectual capital whose ideas attract significant financing in the United States. The concept is predicated on the idea that innovation can create large numbers of jobs for U.S. workers. The visa would be limited to persons who have the necessary entrepreneurial skills to secure a significant amount of money from U.S. based venture capital firms or U.S. based angel investors.

H.R. 2131 therefore allocates up to 10,000 green cards a year for alien entrepreneurs who can attract investment to establish businesses that will create at least five jobs.

VIII. PHYSICIANS WORKING IN MEDICALLY-UNDERSERVED AREAS

Foreign medical graduates often come to the U.S. to enter residency programs under J foreign exchange visas, after which they must return home for 2 years before being able to return to the U.S. to work.[69] J visa holders can receive waivers of the 2 year foreign residency requirement under the "Conrad State 30 program" that are requested by Federal or state agencies if they promise to serve for 3 years in medical practice in geographic areas designated by the Secretary of the Department of Health and Human Services as having a shortage of health care professionals—each state can receive up to 30 waivers a year requested by state agencies.[70]

The Virginia Rural Health Association states that:

> The Conrad State 30 Program has been of tremendous assistance to VRHA members. But Virginia exhausts its quota of 30 J-1 waivers very early in the year—severely limiting its utility as a recruitment tool. . . . This year, the quota was reached in February. This means that, for the majority of the year, we cannot use the Conrad J-1 waiver program and members of our organization go without critically needed physicians. . . . An arbitrary quota is preventing Virginians from receiving the medical care they need."[71]

The Medical Society of Virginia also believes that the program will "improve access to care in rural and underserved areas" of Virginia.[72]

H.R. 2131 permanently authorizes the program allowing foreign doctors to work in medically underserved areas without first having to return home for 2 years after their residencies, increases the number of slots available to each state, and makes other improvements to the program.

IX. THE PER-COUNTRY IMMIGRANT VISA CAP

As stated, the Immigration and Nationality Act generally provides that the total number of employment-based immigrant visas made available to natives of any single foreign country in a year

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[69] *See* INA sec. 212(e).

[70] *See* INA sec 214(l).

[71] Letter from Beth O'Connor, Executive Director, Virginia Rural Health Association, to Representative Bob Goodlatte 1 (March 21, 2013).

[72] Letter from Russell Libby, President, Medical Society of Virginia, to Representative Bob Goodlatte 1 (May 9, 2013).

cannot exceed 7% of the total number of such visas made available in a year. It takes much longer for visas to become available to natives of certain countries.

For instance, in the employment-based second preference category for professionals with advanced degrees and aliens of exceptional ability, immigrant visas are now immediately available to approved applicants from most countries. However, because employers seek so many workers from India and China, the per-country caps result in green cards only being available to these natives who first applied on or before 2008.

Not only is the per-country cap unfair to immigrants from certain countries (who have to wait longer for immigrant visas than do similarly situated immigrants from other countries), but it punishes American employers. Why should employers have to wait longer for immigrant visas for crucial employees simply because the workers are from India or China? Employers have already proven to the U.S. government that they need these workers, that qualified Americans are not available and that American workers will not be harmed. The employment-based per-country cap does not make sense. The Judiciary Committee's report from the 112th Congress on H.R. 3012, the "Fairness for High-Skilled Immigrants Act of 2011," describes in detail the Committee's belief as to why the employment-based per-country cap should be eliminated.[73]

H.R. 2131 eliminates the employment-based per-country cap and raises the family-sponsored per-country cap from 7% to 15%.

X. THE H-1B VISA PROGRAM

"H-1B" visas are visas available for workers coming temporarily to the United States to perform services in a specialty occupation.[74] Such an occupation is one that requires "(A) theoretical and practical application of a body of highly specialized knowledge, and (B) attainment of a bachelor's or higher degree in the specific specialty (or its equivalent) as a minimum for entry into the occupation in the United States."[75] The period of authorized admission is up to 6 years.[76]

From 2000 to 2009, the largest occupations of approved H-1B workers were: systems analysis and programming (42%), college/university education (7%), accountants and auditors (4%), electrical/electronics engineers (4%), other computer-related (4%), physicians/surgeons (3%), and biological sciences (2%).[77] USCIS data shows that in 2012, 61% of all initial H-1B approvals went to computer-related workers.[78] The percentage of H-1B workers with graduate degrees increased from 40% in 2000 to 53% in 2012.[79] The percentage with graduate degrees from U.S. universities rose

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[73] *See* H.R. Rep. No. 112–292 (2011).

[74] *See* INA sec. 101(a)(15)(H)(i)(b).

[75] INA sec 214(i)(1).

[76] Aliens can stay longer than 6 years as long as they have an employment-based immigrant visas petition pending. *See* section 11030A of title 1 of division C of Pub. L. No. 107–273 (8 U.S.C. sec. 1184 note).

[77] *See H-1B Visa Program: Reforms Are Needed to Minimize the Risks and Costs of Current Program* at 34 (including both initial petitions and requests for visa extensions).

[78] *See* USCIS, *Characteristics of H-1B Specialty Occupation Workers: Fiscal Year 2012 Annual Report* at 13 (2013).

[79] *See id.* at 10 and *H-1B Visa Program: Reforms Are Needed to Minimize the Risks and Costs of Current Program* at 35 (including both initial petitions and requests for visa extensions).

to 36% of all approved workers in 2009.[80] Only 1% of H-1B workers do not have at least a bachelor's degree.[81]

Historically, the total number of aliens who could be issued visas or otherwise provided nonimmigrant status as H-1B workers during any fiscal year could not exceed 65,000. In fiscal year 1997, the 65,000 cap was reached for the first time. In response, Congress passed the "American Competitiveness and Workforce Improvement Act of 1998," which raised the cap to 115,000 for fiscal years 1999 and 2000.[82] This higher cap was itself reached in fiscal year 1999.

In response, Congress passed the "American Competitiveness in the Twenty-First Century Act of 2000", which increased the cap to 195,000 for fiscal years 2001 through 2003 (after which it would fall back to 65,000).[83] The Act also provided that the cap would not apply to H-1B petitions approved for institutions of higher education (or related or affiliated nonprofit entities), nonprofit research organizations and governmental research organizations, and such petitions would not count against the cap.[84] The 195,000 cap was not reached in fiscal years 2001–2003. In fiscal year 2004, the 65,000 cap was reached on February 17, 2004.[85]

In response, Congress passed the "L-1 Visa and H-1B Visa Reform Act", which provided that the 65,000 cap would not apply to the first 20,000 H-1B visas granted to aliens who have earned master's or higher degrees from U.S. institutions of higher education, and such petitions would not count against the cap.[86]

In fiscal year 2005, the cap was reached on October 1, 2004;[87] in fiscal year 2006, the cap was reached on August 10, 2005 (Jan. 17, 2006, for the additional visas for graduates of U.S. universities); in fiscal year 2007, the cap was reached on May 26, 2006 (July 26, 2006, for the additional visas for graduates of U.S. universities); in fiscal year 2008, the cap was reached April 2, 2007 (April 30, 2007, for the additional visas for graduates of U.S. universities); in fiscal year 2009, both caps were reached on April 5, 2008; and in 2010 the cap was reached on December 21, 2009 (July 9, 2009, for the additional visas for graduates of U.S. universities).[88] In fiscal year 2011, the cap was reached on January 26, 2011 (December 22, 2010, for the additional visas for graduates of U.S. universities); in fiscal year 2012, the cap was reached on November 23, 2011 (October 19, 2011, for the additional visas for graduates of U.S. universities; in fiscal year 2013, the cap was reached on June 12, 2012 (June 7, 2012, for the additional visas for graduates of U.S. universities); in fiscal year 2014, the cap was reached within

[80] *See H-1B Visa Program: Reforms Are Needed to Minimize the Risks and Costs of Current Program* at 35 (including both initial petitions and requests for visa extensions).

[81] *See Characteristics of H-1B Specialty Occupation Workers: Fiscal Year 2012 Annual Report* at 10.

[82] *See* title IV of division C of Pub. L. No. 105–277.

[83] *See* Pub. L. No. 106–313.

[84] *See id.* at section 103, INA sec. 214(g)(5).

[85] Employers can petition for H-1B workers for a fiscal year (beginning on October 1st of the previous calendar year) starting on April 1st of the previous calendar year.

[86] *See* section 425(a) of subtitle B of title IV of division J of Pub. L. No. 108–447, INA sec. 214(g)(5).

[87] The Department of Homeland Security's Office of the Inspector General found that in 2005, USCIS mistakenly exceeded the 65,000 cap by about 7,000 approved petitions. *See* Department of Homeland Security, Office of the Inspector General, *USCIS Approval of H-1B Petitions Exceeded 65,000 Cap in Fiscal Year 2005* (2005).

[88] *See H-1B Visa Program: Reforms Are Needed to Minimize the Risks and Costs of Current Program* at 16.

the first week of the filing period (which ended on April 5, 2013)(it was also reached within this period for the additional visas for graduates of U.S. universities).[89]

From 2000 to 2009, over 14% of all initial petitions were submitted by employers not subject to the cap.[90] In addition, in 2009, 87,519 workers (initial and extensions) were approved for visas to work for 6,034 cap-exempt employers.[91]

Because of employers' needs to bring H-1B workers on board in the shortest possible time, the H-1B program's mechanism for protecting American workers is not based on a "labor certification"-like pre-arrival review of the need for foreign workers and the unavailability of suitable U.S. candidates. Instead, the employer has to file a "labor condition application" making certain basic attestations and the Secretary of Labor investigates complaints alleging noncompliance.[92]

There are a number of attestations a petitioning employer must make, including that the employer will pay H-1B aliens wages that are the higher of the actual wage level paid by the employer to all other individuals with similar experience and qualifications for the specific employment in question or, if higher, the prevailing wage level (when the Secretary of Labor uses a governmental survey to determine the prevailing wage, such survey shall provide at least four levels of wages commensurate with experience, education, and the level of supervision)[93] for the occupational classification in the area of employment. Universities and certain other employers only have to pay the prevailing wage level of employees at similar institutions.[94] The employer will provide working conditions for H-1B aliens that will not adversely affect those of workers similarly employed.[95]

The Labor Department enforces the program. Departmental investigations as to whether an employer has failed to fulfill its attestations or has misrepresented material facts in its application are triggered by complaints filed by aggrieved persons or organizations (including bargaining representatives)—investigations can be conducted where there is reasonable cause to believe that a violation has occurred.[96] The Labor Department can investigate an employer using the H-1B program without having received a complaint from an aggrieved party in certain circumstances—where the Secretary personally certifies that reasonable cause exists that an employer is not in compliance with the program or where the Department receives specific credible information that provides reasonable cause to believe that the employer has committed a willful failure to meet conditions of the H-1B program, has shown a pattern or practice of failing to meet the conditions, or has substantially failed to meet the conditions in a way that affects multiple employees.[97] In addition, the Labor Department can subject employers to random investigations for up to 5 years after an em-

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[89] Information provided by U.S. Citizenship and Immigration Services.
[90] *See H-1B Visa Program: Reforms Are Needed to Minimize the Risks and Costs of Current Program* at 11.
[91] *See id.* at 59.
[92] *See* INA sec. 212(n).
[93] *See* INA sec. 212 (p)(4).
[94] *See* INA sec. 212(p)(1).
[95] *See* INA sec. 212(n)(1)(A)(ii).
[96] *See* INA sec. 212(n)(2)(A).
[97] *See* INA sec. 212(2)(G).

ployer is found to have committed a willful failure to meet the conditions of the H-1B program.[98]

A. H-1B Wage Protections

The prevailing wage requirement under the H-1B program is designed to protect competing American workers from wage depression and a lessening of job opportunities.

Two years ago, the Government Accountability Office found that:

> [W]e examined data on salaries for the three occupations that absorbed the largest proportion of H-1B workers relative to the stock of U.S. workers in 2008, and compared this to data on the reported salaries listed by the employer on H-1B petitions. A comparison of median annual salaries reveals that for systems analysts, programmers, and other computer-related workers—the largest of the three occupational categories we examined—H-1B workers tended to earn less than U.S. workers; however, some of the salary gap appears to be explained by differences in ages, which may reflect differences in the extent of their work experience. . . . [D]ifferences in median reported earnings between H-1B workers aged 20 to 29 and U.S. workers of the same age were not statistically significantly different, and the same was true for workers aged 30 to 39; however, H-1B workers aged 40 to 50 had median reported earnings that were significantly lower than the median earnings of U.S. workers in this occupation. Among electronics and electrical engineers, we did not find significant differences in median earnings of approved H-1B workers and U.S. workers, overall and within the age groups we examined. Among college and university educators, differences in reported earnings between H-1B workers and U.S. workers were not statistically significant except among younger age groups in which the H-1B workers had higher reported earnings than U.S. workers in the same age category; however, we could not account for all factors that might affect salary levels. . . . For all groups, differences in other factors, such as skill level, might explain some of the remaining salary differences; however, a lack of data on these factors precludes our analysis of them. In addition, differences in factors such as geographic location, size of firm, and industry, as well as level of education, which may also affect salary differences, are not controlled for here due to data limitations. For example, if certain groups of workers are more heavily concentrated in high-cost parts of the country, this will be reflected in the median wage.
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> . . . .
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> Because H-1B workers tend to be younger (with less potential work experience) than their U.S. counterparts who tend to be older (with more potential work experience), some labor advocates we spoke with argued that the H-1B program detrimentally impacts older IT professionals. Several researchers and labor advocates have stated that tech-

[98] *See* INA sec. 212(n)(2)(F).

> nology companies seek to replace older, American IT workers with cheaper, younger workers that are freshly supplied through the H-1B program in order to lower costs, and that IT companies have no incentive to retain and retrain older workers with the latest skills, since the H-1B program provides ready access to young workers with cutting-edge training. While companies could use any young, skilled workers to lower their labor costs in this manner, advocates argue that the H-1B program facilitates the practice of displacing older IT workers because it provides an inflow of new workers in IT fields that is much larger than would otherwise be available to U.S. employers. The analysis presented here does not provide a test of this theory because it does not identify what the wages of older U.S. IT professionals would have been in the absence of the H-1B program, nor does it account for the myriad factors affecting wage, for which we lack data.[99]

In determining the prevailing wage for H-1B workers, Department of Labor surveys use a four-tier wage scale:

> *Level I* (entry) wage rates are assigned to job offers for beginning level employees who have only a basic understanding of the occupation. These employees perform routine tasks that require limited, if any, exercise of judgment. The tasks provide experience and familiarization with the employer's methods, practices, and programs. . . . These employees work under close supervision and receive specific instructions on required tasks and results expected. Their work is closely monitored and reviewed for accuracy.
>
> *Level II* (qualified) wage rates are assigned to job offers for qualified employees who have attained, either through education or experience, a good understanding of the occupation. They perform moderately complex tasks that require limited judgment.
>
> *Level III* (experienced) wage rates are assigned to job offers for experienced employees who have a sound understanding of the occupation and have attained, either through education or experience, special skills or knowledge. They perform tasks that require exercising judgment and may coordinate the activities of other staff. They may have supervisory authority over those staff.
>
> *Level IV* (fully competent) wage rates are assigned to job offers for competent employees who have sufficient experience in the occupation to plan and conduct work requiring judgment and the independent evaluation, selection, modification, and application of standard procedures and techniques. Such employees use advanced skills and diversified knowledge to solve unusual and complex problems. These

[99] *H-1B Visa Program: Reforms Are Needed to Minimize the Risks and Costs of Current Program* at 40–42 (footnotes omitted). GAO found that 50% of U.S. citizen electrical/electronics engineers were aged 40–50 while only 9% of such H-1B workers were; for systems analysts, programmers and other computer-related workers, 40% of U.S. citizens were aged 40–50, while only 3% of such H-1B workers were. *See id.* at 89 (figure 16).

> employees receive only technical guidance and their work is reviewed only for application of sound judgment and effectiveness in meeting the establishment's procedures and expectations. They generally have management and/or supervisory responsibilities.[100]

GAO found that 54% of aliens with approved LCAs from June 2009 through July 2010 were categorized by their employers on their LCAs as level one (entry level), 29% were categorized as level two (qualified), 11% were qualified as level three (experienced) and only 6% were qualified as level four (fully competent).[101]

The H-1B program should facilitate the availability to American employers of the "best and brightest" workers from around the world. As the immigration advocacy organization FWD.us states, Congress should increase the numbers of H-1Bs to "attract the world's best and the brightest workers."[102] The Society for Human Resource Management argues that the H-1B cap should be raised so that employers will have the "reliability that the best and brightest talent will be able to join the employer."[103] However, given that GAO found that the majority of H-1B aliens with approved LCAs are classified at the lowest level, questions can be raised as to whether the use of H-1B program is always focused on the "the best and the brightest."

In order to ensure that the prevailing wage system protects U.S. workers from potential wage depression and that employers focus on bringing in the best and brightest foreign workers, H.R. 2131 provides that employers shall use prevailing wage surveys—either governmental or private—that provide three levels of wages with a lowest prevailing wage level not lower than 80% of the average wage level for the occupation. This ensures that if employers pay the majority of their H-1Bs at the lowest wage level, a wage floor will prevent the program from potentially harming the wages of competing American workers and will encourage employers to use the H-1B program for higher-value and higher-skilled workers. As the bill more than doubles the H-1B program's yearly cap, these wage provisions will help protect American workers.[104]

B. H-1B Enforcement Issues

GAO has evaluated the effectiveness of enforcement of the H-1B program and found that:

> Labor's Wage and Hour investigates H-1B complaints primarily related to improper wage payments and failures to notify workers that a company intends to hire an H-1B worker. However, its ability to enforce worker protections

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[100] Employment and Training Administration, U.S. Department of Labor, *Employment and Training Administration Prevailing Wage Determination Policy Guidance Nonagricultural Immigration Programs* (2009) (at appendix A).

[101] *See H-1B Visa Program: Reforms Are Needed to Minimize the Risks and Costs of Current Program* at 58 (table 5).

[102] *See* FWD.us website.

[103] *See* Society for Human Resource Management website.

[104] The bill exempts employers from the prevailing wage requirement if 80% or more of the employer's workers in the same occupation in the same city or town are Americans workers. If most of an employer's workers in an occupation are in fact American workers, it can reasonably be assumed that the wages of these American workers are not being negatively impacted by foreign workers. In this situation, the employer would simply have to pay its foreign workers the same wages it pays to its comparable American workers (with a wage floor for larger employers of the mean of the lowest one-half of wages surveyed).

with regard to the H-1B program is limited. Although the Secretary of Labor has authority to initiate investigations, Wage and Hour reported that it had never initiated an investigation under this authority. Officials explained that they rarely proactively investigate companies for H-1B violations, and that they may generally only act on formal complaints. Moreover, by law, investigations can only be initiated from information obtained from an aggrieved or credible party outside of Labor. . . .

While the majority of complaints received by Labor have been reported by H-1B workers, very few complaints are filed. In 2009, only 664 out of 51,980 companies approved to hire new or extending H-1B workers had complaints against them. According to agency officials, H-1B workers are likely to be reluctant to file complaints against employers for fear that the company might be disbarred, which in turn could result in the complainant and fellow H-1B workers at the company losing their jobs and potentially having to leave the United States. Further, investigators told us that even after an H-1B worker files a complaint, the H-1B worker may not cooperate in the investigation for fear of similar repercussions. In these instances, investigators are sometimes unable to complete the investigation. The relatively small number of H-1B-related complaints in 2009 nevertheless resulted in Labor requiring companies to pay over $10 million in unpaid wages to 1,202 workers and $739,929 in civil monetary penalties. . . .

. . . .

[W]age and Hour has limited ability to persuade employers to cooperate with investigations. The fine it can levy against employers for not cooperating is far less than the potential penalty for a finding of noncompliance with the terms of the program. Investigators noted that when employers do not cooperate, it can take them months to obtain the requested paperwork, which essentially stalls the time-sensitive investigation.

[W]age and Hour lacks subpoena authority to obtain such records directly from the employer. In contrast, Wage and Hour, as well as Employment and Training, have subpoena power for other labor protection programs they administer, such as under the Fair Labor Standards Act and the Migrant and Seasonal Agricultural Worker Protection Act. According to Wage and Hour officials, subpoena power increases cooperation from companies and is the most effective way to speed up investigations, since companies could face harsh penalties, such as debarment, for not cooperating.

. . . .

Restrictions on agencies' abilities to enforce program requirements and coordinate with one another widen the

risk of fraud and abuse, and undermine efforts to enforce worker protections.[105]

In order to ensure that American workers are not being hurt by the H-1B program and the ineffectiveness of the complaint-driven enforcement process, H.R. 2131 provides the Department of Labor with general random audit authority and subpoena authority. However, in order to prevent potential abuse of the audit authority, the bill prohibits repetitive, abusive audits. It provides that an employer cannot be subject to a random audit within 4 years of the time that it has been subject to two previous random audits (unless willful violations had been found).

C. H-1B Program Fraud

The Judiciary Committee has long been concerned about fraud in the H-1B program.[106] USCIS's Office of Fraud Detection and National Security ("FDNS") issued a Benefit Fraud and Compliance Assessment of fraud in the H-1B program in 2008.[107] FDNS looked at 246 cases drawn from a total population of 96,827 approved, denied or pending H-1B petitions filed between October 1, 2005 and March 31, 2006 (most were petitions to extend the existing H-1B status of workers). The report found that 51 of the 246 cases contained fraud and/or technical violations—a rate of 20.7%—33 cases of fraud (or fraud plus technical violations) and 18 cases of technical violations. Of the cases that USCIS had already approved, the violation rate was 19%, of the pending cases the rate was 29%, and of the denied cases, the rate was 40%. 80% of the fraud was discovered during site visits.

What type of fraud did FDNS find? The alien did not work at the actual job location listed on the LCA in 28 cases, 15 because of fraud and 13 because of technical violations. The alien workers had not received the required prevailing wage or were improperly "benched" (placed without pay in non-working status because of a lack of work) in 14 cases—nine because of fraud and five because of technical violations. Fraud involving fraudulent or forged documents was found in 10 cases. The petitioning businesses were found to be "shells" (business locations nonexistent, no evidence of daily business activity, etc.) in seven cases, six because of fraud and one because of a technical violation. The actual job duties were significantly different from those described in the petition in six cases, five because of fraud and one because of a technical violation. Fraud involving misrepresentation of H-1B status was found in three cases (such as aliens entering the U.S. after they had been fired or quit their jobs). The beneficiary unlawfully paid the fees associated with an H-1B petition in three cases, two because of fraud and one because of a technical violation. Six cases were characterized as fraudulent because they were already under ICE investigation and ICE had requested that FDNS not contact the petitioner or the beneficiary due to the ongoing investigation.

The report found that there was fraud/technical violations in 31% of the cases where the beneficiary had a bachelor's degree and in

[105] *H-1B Visa Program: Reforms Are Needed to Minimize the Risks and Costs of Current Program* at 47–49, 60.
[106] H.R. Rept. No. 106–692 at 23–25 (2000).
[107] *See* USCIS, *H-1B Benefit Fraud & Compliance Assessment* (2008).

only 13% of the cases where the beneficiary had a graduate degree. The violation rate ranged from 42% for cases involving accounting, human resources, sales, advertising and business analysts and 27% for computer professionals to only 8% for architecture, engineering and surveying professionals. Cases involving businesses founded from 1995 to 2005 had a 40% violation rate, while firms established prior to 1995 had a 10% violation rate. Employers employing 26 or more workers had an 11% violation rate while those with less than 26 workers had a 54% violation rate. Companies with annual gross income of greater than $10 million had a 7% violation rate while smaller firms had a 41% rate and non-profits had a 6% rate.

Because of this legacy, H.R. 2131 incorporates powerful anti-fraud measures into the H-1B program. This will help ensure that all available H-1B visas go to deserving employers. The bill provides that the State Department shall determine the equivalence of foreign college degrees to U.S. degrees and will verify the authenticity of foreign degrees. It requires that commercial employers show that they maintain places of business in the United States that are licensed in accordance with applicable licensing requirements and have sufficient assets to display real business activity. And, as discussed, it provides the Department of Labor with subpoena power.

XI. L VISAS

L visas are temporary visas available for "intracompany transferees"—and allow employees working for a company overseas to be shifted to a worksite in the United States. A visa is available to an alien who "within 3 years preceding the time of his application for admission into the United States, has been employed continuously for 1 year by a firm . . . or an affiliate or subsidiary thereof and who seeks to enter the United States temporarily in order to continue to render his services to the same employer or a subsidiary or affiliate thereof in a capacity that is managerial, executive, or involves specialized knowledge. . . ." [108] "Specialized knowledge" with respect to a company is "special knowledge of the company product and its application in international markets or an advanced level of knowledge of processes and procedures of the company." [109]

There is no numerical cap or prevailing wage requirements associated with the L visa program. There is much overlap between H-1B "specialty occupation" workers and L visa "specialized knowledge" workers. And the two principle protections for American workers in the H-1B program—the numerical cap and the prevailing wage requirement—are absent from the L visa program. This has caused a great temptation to employers to use the L visa program when they should instead be using the H-1B program. The Department of Homeland Security's Office of the Inspector General has reported that:

> [Department of State] foreign service officers [have] expressed concern about substitution [of L visas for H-1B visas]. One southeast Asian post we surveyed reported: "Host country software companies appear to be using the

[108] *See* INA sec. 101(a)(15)(L).
[109] *See* INA sec. 214(c)(2)(B).

> L visa to get around H quotas. . . .” To manage the displacement of American workers, Congress has imposed a statutory limit on the number of H-1B[s]. . . . There is some concern that the L-1B visa for workers with specialized knowledge, which has no such numerical limit, might serve as a way to avoid the H-1B cap for some employers. The L-1 visa has other advantages over the H-1B. . . . One is that unlike the H-1B, the L-1 has no labor certification requirement to ensure that recipients are paid the prevailing wage and that American workers are not displaced.[110]

The Inspector General recently concluded that the data they reviewed did not find “conclusive evidence that the L-1 visa program is being used to avoid H-1B restrictions[,]” but it reported that the State Department consular bureau in India (which processes 37% of all L visas) believes that “India is the only country in the world where companies have built a business model dependent on using blanket L-1s to send large numbers of personnel to the United States who would otherwise require H-1Bs.” [111]

In order to best protect American workers and to discourage the use of the L visa program as a way to evade the program requirements of the H-1B program, H.R. 2131 provides that employers of L visa workers with “specialized knowledge” have to generally pay them according to the H-1B program’s wage standards, but only if they are in the U.S. for a cumulative period of more than 6 months in a 2-year period. The requirement does not apply to workers on short-term assignments and it does not apply to managers and executives.

XII. OTHER VISAS FOR SPECIALTY OCCUPATION WORKERS AND PROFESSIONALS

There are other temporary visa programs similar to the H-1B program. There is a temporary visa program for professionals from North American Free Trade Agreement countries (Mexico and Canada) that contains no numerical limit by statute and that currently contains no wage requirements. There is a temporary visa program for aliens from Chile and Singapore who engage in specialty occupations pursuant to the United States-Chile Free Trade Agreement and the United States-Singapore Free Trade Agreement with a numerical limit of 1,400 approvals of initial applications by Chileans each year and a limit of 5,400 approvals of initial applications by Singaporeans and wage standards similar to the H-1B program. There is a temporary visa program for aliens from Australia who engage in specialty occupations with a numerical limit of 10,500 approvals of initial applications by Australians each year and wage standards similar to the H-1B program. Finally, “optional practical training (“OPT”) allows foreign students to engage in “temporary employment for practical training directly related to the student’s major area of study” after completion of all course requirements for a degree (and in certain instances during study). Generally, OPT must be completed within 14 months of completion of study, but

[110] Office of the Inspector General, DHS, *Review of Vulnerabilities and Potential Abuses of the L-1 Visa Program* 9–10 (2006) (citations omitted).
[111] Office of the Inspector General, DHS, *Implementation of L-1 Visa Regulations* 5, 13 (2013).

graduates in STEM fields can participate in OPT for an additional 17 months—or 29 months altogether. There is no numerical cap or wage requirements associated with OPT.

In order to best protect American workers, H.R. 2131 provides that employers of aliens under all these programs have to comply with the H-1B program's wage standards.

Hearings

The Subcommittee on Immigration and Border Security held a hearing entitled "Advancing American Competitiveness through Skilled Immigration" on March 5, 2013.

Committee Consideration

On June 27, 2013, the Committee met in open session and ordered the bill H.R. 2131 favorably reported with an amendment, by a rollcall vote of 20 to 14, a quorum being present.

Committee Votes

In compliance with clause 3(b) of rule XIII of the Rules of the House of Representatives, the Committee advises that the following rollcall votes occurred during the Committee's consideration of H.R. 2131.

1. The amendment offered by Ms. Chu to the manager's amendment provides that all alien beneficiaries of approved fourth preference family-sponsored immigrant visa petitions (siblings of U.S. citizens) filed prior to October 1, 2013, would be eligible to receive visas at a rate of 65,000 a year, and that once they all received visas, the 65,000 visas a year would be made available to aliens beneficiaries in the family-sponsored and employment-based immigrant visa categories. This amendment was defeated by a rollcall vote of 11–22.

ROLLCALL NO. 1

	Ayes	Nays	Present
Mr. Goodlatte (VA), Chairman		X	
Mr. Sensenbrenner, Jr. (WI)		X	
Mr. Coble (NC)		X	
Mr. Smith (TX)		X	
Mr. Chabot (OH)		X	
Mr. Bachus (AL)		X	
Mr. Issa (CA)		X	
Mr. Forbes (VA)		X	
Mr. King (IA)		X	
Mr. Franks (AZ)		X	
Mr. Gohmert (TX)			
Mr. Jordan (OH)		X	
Mr. Poe (TX)		X	
Mr. Chaffetz (UT)		X	
Mr. Marino (PA)		X	
Mr. Gowdy (SC)		X	
Mr. Amodei (NV)		X	
Mr. Labrador (ID)		X	

ROLLCALL NO. 1—Continued

	Ayes	Nays	Present
Ms. Farenthold (TX)		X	
Mr. Holding (NC)		X	
Mr. Collins (GA)		X	
Mr. DeSantis (FL)		X	
Mr. Smith (MO)		X	
Mr. Conyers, Jr. (MI), Ranking Member	X		
Mr. Nadler (NY)	X		
Mr. Scott (VA)			
Mr. Watt (NC)			
Ms. Lofgren (CA)	X		
Ms. Jackson Lee (TX)			
Mr. Cohen (TN)	X		
Mr. Johnson (GA)	X		
Mr. Pierluisi (PR)	X		
Ms. Chu (CA)	X		
Mr. Deutch (FL)	X		
Mr. Gutierrez (IL)			
Ms. Bass (CA)			
Mr. Richmond (LA)	X		
Ms. DelBene (WA)	X		
Mr. Garcia (FL)	X		
Mr. Jeffries (NY)			
Total	11	22	

2. The amendment offered by Mr. Conyers strikes the bill's provision eliminating the diversity immigrant visa program. This amendment was defeated by a rollcall vote of 16–19.

ROLLCALL NO. 2

	Ayes	Nays	Present
Mr. Goodlatte (VA), Chairman		X	
Mr. Sensenbrenner, Jr. (WI)		X	
Mr. Coble (NC)			
Mr. Smith (TX)		X	
Mr. Chabot (OH)			
Mr. Bachus (AL)		X	
Mr. Issa (CA)		X	
Mr. Forbes (VA)		X	
Mr. King (IA)		X	
Mr. Franks (AZ)			
Mr. Gohmert (TX)		X	
Mr. Jordan (OH)		X	
Mr. Poe (TX)			
Mr. Chaffetz (UT)		X	
Mr. Marino (PA)		X	
Mr. Gowdy (SC)		X	
Mr. Amodei (NV)		X	
Mr. Labrador (ID)		X	

ROLLCALL NO. 2—Continued

	Ayes	Nays	Present
Ms. Farenthold (TX)		X	
Mr. Holding (NC)		X	
Mr. Collins (GA)		X	
Mr. DeSantis (FL)		X	
Mr. Smith (MO)		X	
Mr. Conyers, Jr. (MI), Ranking Member	X		
Mr. Nadler (NY)	X		
Mr. Scott (VA)	X		
Mr. Watt (NC)			
Ms. Lofgren (CA)	X		
Ms. Jackson Lee (TX)	X		
Mr. Cohen (TN)	X		
Mr. Johnson (GA)	X		
Mr. Pierluisi (PR)	X		
Ms. Chu (CA)	X		
Mr. Deutch (FL)	X		
Mr. Gutierrez (IL)	X		
Ms. Bass (CA)	X		
Mr. Richmond (LA)	X		
Ms. DelBene (WA)	X		
Mr. Garcia (FL)	X		
Mr. Jeffries (NY)	X		
Total	16	19	

3. The amendment offered by Ms. Chu strikes the bill's provisions eliminating the siblings of U.S. citizens immigrant visa program and increasing the allotment of immigrant visas for the spouses and minor children of permanent residents. This amendment was defeated by a rollcall vote of 15–20.

ROLLCALL NO. 3

	Ayes	Nays	Present
Mr. Goodlatte (VA), Chairman		X	
Mr. Sensenbrenner, Jr. (WI)			
Mr. Coble (NC)		X	
Mr. Smith (TX)		X	
Mr. Chabot (OH)		X	
Mr. Bachus (AL)		X	
Mr. Issa (CA)		X	
Mr. Forbes (VA)		X	
Mr. King (IA)		X	
Mr. Franks (AZ)			
Mr. Gohmert (TX)			
Mr. Jordan (OH)		X	
Mr. Poe (TX)		X	
Mr. Chaffetz (UT)		X	
Mr. Marino (PA)		X	
Mr. Gowdy (SC)		X	

ROLLCALL NO. 3—Continued

	Ayes	Nays	Present
Mr. Amodei (NV)		X	
Mr. Labrador (ID)		X	
Ms. Farenthold (TX)		X	
Mr. Holding (NC)		X	
Mr. Collins (GA)		X	
Mr. DeSantis (FL)		X	
Mr. Smith (MO)		X	
Mr. Conyers, Jr. (MI), Ranking Member	X		
Mr. Nadler (NY)	X		
Mr. Scott (VA)	X		
Mr. Watt (NC)			
Ms. Lofgren (CA)	X		
Ms. Jackson Lee (TX)	X		
Mr. Cohen (TN)	X		
Mr. Johnson (GA)	X		
Mr. Pierluisi (PR)	X		
Ms. Chu (CA)	X		
Mr. Deutch (FL)	X		
Mr. Gutierrez (IL)	X		
Ms. Bass (CA)	X		
Mr. Richmond (LA)	X		
Ms. DelBene (WA)	X		
Mr. Garcia (FL)			
Mr. Jeffries (NY)	X		
Total	15	20	

4. The amendment offered by Ms. Jackson Lee strikes the bill's provision eliminating the diversity immigrant visa program and instead doubles the allotment of diversity visas to 110,000 a year. This amendment was defeated by a rollcall vote of 15–20.

ROLLCALL NO. 4

	Ayes	Nays	Present
Mr. Goodlatte (VA), Chairman		X	
Mr. Sensenbrenner, Jr. (WI)			
Mr. Coble (NC)		X	
Mr. Smith (TX)		X	
Mr. Chabot (OH)		X	
Mr. Bachus (AL)		X	
Mr. Issa (CA)		X	
Mr. Forbes (VA)		X	
Mr. King (IA)		X	
Mr. Franks (AZ)			
Mr. Gohmert (TX)			
Mr. Jordan (OH)		X	
Mr. Poe (TX)		X	
Mr. Chaffetz (UT)		X	
Mr. Marino (PA)		X	

ROLLCALL NO. 4—Continued

	Ayes	Nays	Present
Mr. Gowdy (SC)		X	
Mr. Amodei (NV)		X	
Mr. Labrador (ID)		X	
Ms. Farenthold (TX)		X	
Mr. Holding (NC)		X	
Mr. Collins (GA)		X	
Mr. DeSantis (FL)		X	
Mr. Smith (MO)		X	
Mr. Conyers, Jr. (MI), Ranking Member	X		
Mr. Nadler (NY)	X		
Mr. Scott (VA)	X		
Mr. Watt (NC)	X		
Ms. Lofgren (CA)	X		
Ms. Jackson Lee (TX)	X		
Mr. Cohen (TN)			
Mr. Johnson (GA)	X		
Mr. Pierluisi (PR)	X		
Ms. Chu (CA)	X		
Mr. Deutch (FL)	X		
Mr. Gutierrez (IL)	X		
Ms. Bass (CA)	X		
Mr. Richmond (LA)	X		
Ms. DelBene (WA)	X		
Mr. Garcia (FL)			
Mr. Jeffries (NY)	X		
Total	15	20	

5. The bill was reported favorably, as amended, by a rollcall vote of 20–14.

ROLLCALL NO. 5

	Ayes	Nays	Present
Mr. Goodlatte (VA), Chairman	X		
Mr. Sensenbrenner, Jr. (WI)			
Mr. Coble (NC)	X		
Mr. Smith (TX)	X		
Mr. Chabot (OH)	X		
Mr. Bachus (AL)	X		
Mr. Issa (CA)	X		
Mr. Forbes (VA)	X		
Mr. King (IA)		X	
Mr. Franks (AZ)	X		
Mr. Gohmert (TX)			
Mr. Jordan (OH)	X		
Mr. Poe (TX)	X		
Mr. Chaffetz (UT)	X		
Mr. Marino (PA)	X		
Mr. Gowdy (SC)	X		

ROLLCALL NO. 5—Continued

	Ayes	Nays	Present
Mr. Amodei (NV)	X		
Mr. Labrador (ID)	X		
Ms. Farenthold (TX)	X		
Mr. Holding (NC)	X		
Mr. Collins (GA)	X		
Mr. DeSantis (FL)	X		
Mr. Smith (MO)	X		
Mr. Conyers, Jr. (MI), Ranking Member		X	
Mr. Nadler (NY)		X	
Mr. Scott (VA)		X	
Mr. Watt (NC)		X	
Ms. Lofgren (CA)		X	
Ms. Jackson Lee (TX)		X	
Mr. Cohen (TN)			
Mr. Johnson (GA)		X	
Mr. Pierluisi (PR)			
Ms. Chu (CA)		X	
Mr. Deutch (FL)		X	
Mr. Gutierrez (IL)		X	
Ms. Bass (CA)			
Mr. Richmond (LA)			
Ms. DelBene (WA)		X	
Mr. Garcia (FL)		X	
Mr. Jeffries (NY)		X	
Total	20	14	

Committee Oversight Findings

In compliance with clause 3(c)(1) of rule XIII of the Rules of the House of Representatives, the Committee advises that the findings and recommendations of the Committee, based on oversight activities under clause 2(b)(1) of rule X of the Rules of the House of Representatives, are incorporated in the descriptive portions of this report.

New Budget Authority and Tax Expenditures

Clause 3(c)(2) of rule XIII of the Rules of the House of Representatives is inapplicable because this legislation does not provide new budgetary authority or increased tax expenditures.

Congressional Budget Office Cost Estimate

In compliance with clause 3(c)(3) of rule XIII of the Rules of the House of Representatives, the Committee sets forth, with respect to the bill, H.R. 2131, the following estimate and comparison prepared by the Director of the Congressional Budget Office under section 402 of the Congressional Budget Act of 1974:

U.S. CONGRESS,
CONGRESSIONAL BUDGET OFFICE,
Washington, DC, March 12, 2014.

Hon. BOB GOODLATTE, CHAIRMAN,
Committee on the Judiciary,
House of Representatives, Washington, DC.

DEAR MR. CHAIRMAN: The Congressional Budget Office has prepared the enclosed cost estimate for H.R. 2131, the "Supplying Knowledge-based Immigrants and Lifting Levels of STEM Visas Act" (SKILLS Visa Act).

If you wish further details on this estimate, we will be pleased to provide them. The CBO staff contact is David Rafferty, who can be reached at 226–2820.

Sincerely,

DOUGLAS W. ELMENDORF,
DIRECTOR.

Enclosure

cc: Honorable John Conyers, Jr.
Ranking Member

H.R. 2131—Supplying Knowledge-based Immigrants and Lifting Levels of STEM Visas Act (SKILLS Visa Act).

As ordered reported by the House Committee on the Judiciary on June 27, 2013.

SUMMARY

H.R. 2131 would amend immigration laws to increase the number of highly skilled noncitizens who could receive employment-based immigrant (permanent) and nonimmigrant (temporary) visas to live and work in the United States. In addition, H.R. 2131 would change the numbers of family-based immigrant visas available to certain categories of noncitizens. The bill also would eliminate the immigrant visas made available through the Diversity Visa program. On net, CBO estimates that enacting H.R. 2131 would increase the U.S. population by nearly 1 million in 2024 and in 2034.

Budgetary Effects, 2014–2024

CBO and the staff of the Joint Committee on Taxation (JCT) estimate that enacting

H.R. 2131 would increase revenues by $118 billion over the 2014–2024 period. That increase, largely reflecting additional collections of income and payroll taxes, would result primarily from an expansion in the size of the U.S. labor force.

CBO and JCT estimate that enacting H.R. 2131 also would increase direct spending by $8 billion over the 2014–2024 period. Most of those outlays would be for increases in refundable tax credits stemming from the larger U.S. population under the bill.

On balance, CBO and JCT estimate that enacting H.R. 2131 would reduce budget deficits through the changes in revenues and direct spending by about $110 billion over the 2014–2024 period.

Pay-as-you-go procedures apply to the bill because it would affect direct spending and revenues.

CBO estimates that implementing the bill also would affect spending subject to appropriation. CBO expects that the Department of Homeland Security (DHS) and the Department of State would require about $50 million over the 2015–2019 period to begin processing the increased number of applications for visas resulting from the bill. Additionally, the bill would increase discretionary costs for the Pell Grant program by $68 million over the 2014–2024 period, as the increase in the population would lead to more people attending college.

Following the long-standing convention of not incorporating macroeconomic effects in cost estimates—a practice that has been followed in the Congressional budget process since it was established in 1974—cost estimates produced by CBO and JCT typically reflect the assumption that macroeconomic variables such as gross domestic product (GDP) and employment remain fixed at the values they are projected to reach under current law. However, because H.R. 2131 would materially increase the size of the U.S. labor force, CBO and JCT relaxed that assumption by incorporating in this cost estimate their projections of the direct effects of the bill on the U.S. population, employment, and taxable compensation.

Budgetary Effects, 2025–2034

CBO and JCT generally do not provide cost estimates beyond the standard 10-year projection period. However, H.R. 2131 would continue to reshape the composition and size of the U.S. population and labor force in the decade following 2024, so CBO and JCT have extended their estimate of the effects of this legislation for another decade. CBO and JCT estimate that enacting H.R. 2131 would reduce Federal deficits through changes in revenues and direct spending by about $400 billion over the 2025–2034 period. That effect would be almost entirely the result of higher income and payroll taxes stemming from a larger workforce; direct spending would be little changed from what it would be under current law.

Mandates

H.R. 2131 would impose intergovernmental and private-sector mandates, as defined in the Unfunded Mandates Reform Act (UMRA), by requiring some employers of temporary foreign workers to pay additional fees and other employers of temporary foreign workers to pay higher wages than required under current law.

Based on information from industry experts, DHS, and the Department of State, CBO estimates that the aggregate costs for both public and private employers to comply with the mandates would fall below the annual thresholds established in UMRA for intergovernmental and private-sector mandates ($76 million and $152 million in 2014, respectively, adjusted annually for inflation).

ESTIMATED COST TO THE FEDERAL GOVERNMENT

The estimated budgetary impact of H.R. 2131 is summarized in Table 1. The costs of this legislation would fall within budget functions 150 (international affairs), 250 (general science, space, technology), 500 (education, training, employment, and social services),

550 (health), 570 (Medicare), 600 (income security), 650 (Social Security), and 750 (administration of justice).

TABLE 1. SUMMARY OF ESTIMATED BUDGETARY EFFECTS OF H.R. 2131

	By Fiscal Year, in Billions of Dollars												
	2014	2015	2016	2017	2018	2019	2020	2021	2022	2023	2024	2014-2019	2014-2024
CHANGES IN DIRECT SPENDING													
Estimated Outlays	0	0.1	0.4	0.8	1.0	0.9	1.0	1.1	1.2	1.2	0.8	3.3	8.4
On-Budget	0	0.1	0.4	0.8	1.0	0.9	0.9	1.0	1.1	1.1	0.7	3.3	8.2
Off-Budget	0	*	*	*	*	*	*	*	*	0.1	0.1	*	0.2
CHANGES IN REVENUES													
Estimated Revenues	0	1.0	3.1	5.7	7.9	10.3	13.0	15.3	17.9	20.2	23.6	28.0	118.1
On-Budget	0	0.8	2.3	4.2	5.9	7.6	9.7	11.3	13.0	14.4	16.8	20.7	85.9
Off-Budget	0	0.3	0.8	1.5	2.0	2.7	3.4	4.0	4.9	5.8	6.8	7.3	32.1
NET INCREASE OR DECREASE (-) IN THE DEFICIT FROM CHANGES IN DIRECT SPENDING AND REVENUES													
Impact on Deficit	0	-1.0	-2.7	-4.8	-6.9	-9.3	-12.1	-14.2	-16.8	-19.0	-22.8	-24.7	-109.6
On-Budget	0	-0.7	-1.9	-3.4	-4.9	-6.7	-8.7	-10.3	-11.9	-13.3	-16.1	-17.5	-77.7
Off-Budget	0	-0.3	-0.8	-1.5	-2.0	-2.7	-3.4	-4.0	-4.9	-5.7	-6.7	-7.3	-31.9
CHANGES IN SPENDING SUBJECT TO APPROPRIATION													
Estimated Authorization Level	0	*	*	*	*	*	*	*	*	*	*	0.1	0.1
Estimated Outlays	0	*	*	*	*	*	*	*	*	*	*	0.1	0.1

Notes: The change in direct spending would affect budget authority by similar amounts.

* = an increase of less than $50 million; components may not sum to totals because of rounding.

BASIS OF ESTIMATE

For this estimate, CBO assumes that the bill will be enacted during fiscal year 2014, that the necessary amounts will be appropriated near the beginning of each fiscal year, and that spending will follow historical patterns for existing or similar activities. CBO also assumes that, under the bill, DHS and the Department of State would begin providing the additional visas and work authorizations at the start of fiscal year 2015.

Effects on the U.S. Population

H.R. 2131 would increase the number of noncitizens who could lawfully enter the United States on a permanent basis and the number who could lawfully enter on a temporary basis, and it would amend the criteria for determining noncitizens' eligibility for permanent or temporary admission.

CBO's estimates of the increase in population under the bill takes into account several factors, including the expected mortality of noncitizens and the likelihood that some noncitizens would later return to their native countries. The estimates of the increase in population also include estimates of the number of children who would be born in the United States to foreign-born individuals who would not otherwise have been present here; as under current law, those children would automatically be U.S. citizens from the time

of their birth. Finally, the estimates include estimates of the number of additional immigrants who would enter the country as a result of their family relationships to the additional lawful permanent residents under the bill (that is, by being a spouse, child, or parent of someone who becomes a citizen after becoming a lawful permanent resident).

Taking all of those factors together, CBO estimates that enacting H.R. 2131 would increase the U.S. population by nearly 1 million in 2024 and in 2034.

Lawful Permanent Residents. Noncitizens who receive permission to live permanently in the United States are called lawful permanent residents (LPRs). Those individuals are often referred to as "green-card holders" or "immigrants." Under current law, most LPRs are admitted based on a family relationship with a U.S. citizen or other LPR, or based on a job with an employer who has petitioned for a green card on their behalf. The number of immigrant visas available each year is less than the number of approved petitions for family-sponsored and employment-based immigrants, creating a significant and growing backlog of people awaiting green cards.

On net, CBO estimates that the provisions in H.R. 2131 affecting LPRs would increase the U.S. population by nearly 800,000 in 2024 and in 2034.

Family-Sponsored Immigration. Under current law, certain relatives of U.S. citizens and LPRs can immigrate through family-sponsored preferences, which are effectively capped at 226,000 per year.

H.R. 2131 would make several major changes to family-sponsored preferences. It would:

- Increase the effective cap from 226,000 to 251,000 for 2014 through 2023, and then decrease the effective cap to 186,000 beginning in 2024;
- Increase the number of visas available in the preference categories for spouses and unmarried children of LPRs by 25,000 beginning in 2014;
- Eliminate the preference category for siblings of U.S. citizens beginning in 2024 (the annual cap on immigrants through this category is currently 65,000); and
- Increase the share of family-sponsored preferences that can be from any one country from 7 percent to 15 percent.

On net, CBO estimates that those changes in family-based immigration would increase the U.S. population by about 300,000 in 2024 but reduce it by nearly 100,000 in 2034.

Employment-Based Immigration. Under current law, 140,000 immigrant visas are granted each year through employment-based preferences. Qualified workers and investors—and their dependents—are eligible for those visas.

H.R. 2131 would make several changes to employment-based preferences. It would:

- Increase the effective cap from 140,000 to 230,000 beginning in 2014;

- Increase the number of visas available in the preference categories for professionals with advanced degrees from 40,000 to 55,000 beginning in 2014;
- Increase the number of visas available in the preference categories for skilled workers, professionals without advanced degrees, and unskilled workers from 40,000 to 55,000 beginning in 2014;
- Create new preference categories for individuals with advanced degrees from U.S. universities in science, technology, engineering, and mathematics (STEM) fields and effectively allocate 50,000 visas to those categories beginning in 2014;
- Create a new preference category for entrepreneurs and allocate 10,000 visas to that category beginning in 2014; and
- Eliminate the limit (currently 7 percent) on the share of employment-based preferences that can be from any one country.

CBO estimates that those changes in employment-based immigration would increase the U.S. population by about 900,000 in 2024 and about 1.9 million in 2034.

Diversity Visas. Under current law, the diversity visa program allocates visas through a lottery to people from countries that have had little immigration to the United States. Effectively, 50,000 such visas are available each year.

H.R. 2131 would eliminate the diversity visa program beginning in 2014. However, by the time H.R. 2131 would be enacted, most or all of the diversity visas for 2014 will already have been issued. Furthermore, the individuals selected in the lottery to apply for 2015 visas will already have been notified and will have begun preparing to apply for their visas at the start of 2015. Therefore, CBO assumes the diversity visa program would be eliminated beginning in 2016. The lottery for 2016 visas, scheduled to be held in October and November 2014, would be the first to be cancelled.

CBO estimates that eliminating the diversity visa program would reduce the U.S. population by over 400,000 in 2024 and nearly 1 million in 2033.

Nonimmigrants. Under current law, certain highly skilled noncitizens can reside and work in the United States through H–1B visas, which are capped at 65,000 per year. Another 20,000 visas are available to noncitizens with graduate degrees; additional visas, not subject to a cap, are available to noncitizens hired by certain categories of employers. Dependents of workers with H–1B visas receive H–4 visas, which are not subject to a cap; H–4 visas do not grant work authorization.

H.R. 2131 would make several major changes to nonimmigrant visas. It would:

- Increase the cap on H–1B visas from 65,000 to 155,000 beginning in 2014;
- Increase the number of visas for noncitizens with graduate degrees from 20,000 to 40,000 in 2014, and limit those visas to individuals with degrees in STEM fields;
- Impose new wage requirements on employers using nonimmigrant labor; and

- Grant work authorization to spouses of nonimmigrants with H–1B visas.

CBO expects that the number of H–1B visas that are issued and subject to the cap would reach the new cap by 2023. In 2001, when the H–1B cap was significantly higher than it is today, more than 200,000 petitions for such H–1Bs were approved. Additionally, employers' demand for skilled workers has substantially exceeded the cap on H–1B visas over the past few years. CBO anticipates that strong demand by employers will continue.

CBO expects that the number of people with H–1B visas (and their dependents) in the United States would increase less than the inflow of people with H–1B visas. Specifically, CBO expects that many workers who are already in the country or would enter the country with H–1B visas would shift to employment-based immigrant visas over time, and H.R. 2131 would (as noted above) significantly increase the number of such visas. Therefore, relative to current law, enacting H.R. 2131 would reduce the number of people in H–1B status awaiting green cards and would reduce the amount of time required for future people in H–1B status to adjust their status.

CBO estimates that increasing the number of H–1B visas for highly skilled workers would increase the U.S. population by roughly 200,000 in 2024 and in 2034.

Immigration and Eligibility for Federal Benefits

The eligibility of noncitizens for many Federal benefit programs is determined by the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (PRWORA) and a host of program-specific laws. In brief, the eligibility of noncitizens who also meet the programs' requirements not related to immigration, such as income and asset thresholds, is generally determined in these ways:*

Earned Income Tax Credit and Child Tax Credit. Noncitizens with Social Security Numbers (SSNs) that are valid for employment are eligible to receive the nonrefundable and refundable portions of the Earned Income Tax Credit (EITC). Resident aliens, including LPRs, are eligible to receive the nonrefundable and refundable portions of the child tax credit for qualifying children.

Health Insurance Subsidies. Noncitizens who are lawfully present in the United States—including LPRs and H–1B nonimmigrants and their dependents, and regardless of the number of years they have been in the country—are eligible to receive premium assistance tax credits and exchange subsidies.

Medicaid and the Children's Health Insurance Program (CHIP). Under current law, states have the option to provide full Medicaid and CHIP benefits to certain groups of LPRs and other legal residents. To start, states can cover LPRs who have been in that status for more than 5 years and who meet Medicaid's other eligibility requirements; all states have chosen to do so. In addition, the Children's Health Insurance Program Reauthorization Act of 2009 (CHIPRA) gave states the option to extend Medicaid and

*For a more-detailed explanation of noncitizens' eligibility for those programs, see pages 25–32 of CBO's cost estimate (dated June 18, 2013) for S. 744 as reported by the Senate Committee on the Judiciary on May 28, 2013.

CHIP to children and pregnant women who are lawfully residing in the United States and who would not otherwise be eligible under PRWORA; 22 states and the District of Columbia currently provide such coverage. For other noncitizens, Medicaid pays for a limited benefit that covers the cost of services necessary for the treatment of emergency medical conditions.

Other Programs. In addition, to the extent that they meet the programs' other eligibility requirements, noncitizens are eligible for other Federal benefits as follows:

- Noncitizens who are lawfully present in the United States are eligible for Social Security and Medicare benefits.
- LPRs who are under 18 or who have spent 5 years as LPRs are eligible for Supplemental Nutrition Assistance Program (SNAP) benefits.
- Noncitizens are eligible for child nutrition benefits.
- LPRs and nonimmigrants are eligible for unemployment insurance (UI) benefits.
- LPRs who have become citizens or have obtained 40 quarters of work credit and spent 5 years as LPRs are eligible for Supplemental Security Income (SSI) benefits.
- LPRs are eligible for Federal student aid, including Federal student loans and Pell grants.

Direct Spending

Overall, CBO and JCT estimate that enacting the legislation would increase direct spending by about $8 billion over the 2014–2024 period (see Table 2). All of the budgetary effects are on-budget with the exception of effects related to Social Security, which is classified as off-budget.

H.R. 2131 would increase the size of the population in the United States, which would tend to increase the number of people eligible for the Federal tax credits and benefits from Federal programs described here; however, the legislation would also shift the composition of immigrants and people entering the country on nonimmigrant visas toward those with higher skills and generally higher income, which would tend to decrease the number of people eligible for such tax credits and benefits. According to CBO and JCT's estimates, the former effect would dominate the latter effect over the 2014–2024 period.

TABLE 2. ESTIMATED EFFECTS OF H.R. 2131 ON DIRECT SPENDING, BY PROGRAM

	By Fiscal Year, in Millions of Dollars												
	2014	2015	2016	2017	2018	2019	2020	2021	2022	2023	2024	2014-2019	2014-2024
CHANGES IN DIRECT SPENDING													
Earned Income Tax Credit and Child Tax Credit	0	11	188	499	677	643	701	793	929	943	682	2,018	6,066
Health Insurance Subsidies	0	132	271	321	295	210	129	80	40	-14	-114	1,229	1,350
Medicaid and CHIP	0	10	1	-2	-10	3	25	31	24	11	-21	2	71
Social Security (Off-Budget)	0	*	1	2	4	8	13	25	40	59	85	15	237
Medicare	0	0	0	*	1	2	3	5	11	19	31	3	72
SNAP	0	3	7	8	7	5	16	21	15	9	-1	30	90
Child Nutrition Programs	0	4	10	14	12	10	8	8	7	8	1	50	82
Unemployment Insurance	0	15	25	45	60	75	90	105	120	135	140	220	810
Supplemental Security Income	0	*	1	*	1	2	4	6	6	4	4	4	28
Higher Education Assistance	0	*	*	*	2	3	4	4	4	4	4	5	26
Immigration Fees	0	-92	-63	-38	-54	-41	-34	-24	-20	-19	-11	-288	-396
Total Changes	0	83	440	849	995	921	959	1,054	1,177	1,158	800	3,288	8,436

Notes: CHIP = Children's Health Insurance Program; SNAP = Supplemental Nutrition Assistance Program.

* = an increase of less than $500,000; components may not sum to totals because of rounding.

Earned Income Tax Credit and Child Tax Credit. JCT and CBO estimate that H.R. 2131 would increase outlays for the earned income tax credit and child tax credit by $6.1 billion over the 2014–2024 period. Those credits are both refundable tax credits, which means that if the credits exceed the rest of a taxpayer's liability, the excess may be paid to the taxpayer; those payments are classified as outlays in the Federal budget. H.R. 2131 would increase the amount of those payments by increasing the net number of legally resident aliens.

Health Insurance Subsidies. CBO and JCT estimate that subsidies provided through health insurance exchanges would increase, on net, by $1.8 billion over the 2014–2024 period. The increase in subsidies consists of an increase in both premium assistance tax credits and cost sharing subsidies; the former are refundable tax credits, for which roughly three-quarters of the net increase would be classified as outlays, and the latter would all be classified as outlays. Thus, the net increase in subsidies of $1.8 billion consists of an almost $1.4 billion net increase in outlays (shown here) and a $0.4 billion net reduction in revenues (discussed below).

The provisions of H.R. 2131 that would increase the number of people entering the country as family-sponsored immigrants, employment-based immigrants, and H–1B nonimmigrants would lead to higher exchange subsidies. Many of the employment-based immigrants and H–1B nonimmigrants would have access to employment-based health insurance, would have income exceeding 400 percent of the Federal poverty level, or both—which would generally make them ineligible for exchange subsidies. However, some of those people would be eligible for such subsidies. In addition, exchange subsidies would increase for family-sponsored immigrants because they tend to have lower wages and incomes, and are there-

fore less likely to have access to employment-based health insurance and more likely to have incomes that would allow them to qualify for exchange subsidies. CBO and JCT estimate that exchange subsidies would increase by $5.9 billion over the 2014–2024 period for individuals newly obtaining employment-based, family-sponsored, or H–1B visas (and their dependents).

Partly offsetting the effect of those provisions would be the effect of eliminating the diversity visa program. Similar to family-sponsored immigrants, the individuals obtaining visas through the diversity visa program under current law tend to have lower wages and incomes, and are therefore less likely to have access to employment-based health insurance. As a result, eliminating the diversity visa program would reduce exchange subsidies by an estimated $4.1 billion over the 2014–2024 period.

Other Benefit Programs. The changes in the U.S. population under the bill would lead to increased direct spending over the 2014–2024 period in several other programs, but those effects would be smaller than the effects on the earned income tax credit, child tax credit, and health insurance subsidies. For those programs, the estimated budgetary effects represent the net effects of the increased costs from additional people entering the country under the family-sponsored, employment-based, and highly skilled temporary visa programs and the decreased costs from fewer people entering the country because of the elimination of the diversity visa program. (Beginning in 2024, the elimination of the preference for siblings of U.S. citizens also reduces the costs of those programs.)

On balance, CBO estimates that increased spending for those other programs would total about $1.4 billion over the 2014–2024 period—mostly for unemployment insurance ($800 million) and Social Security ($240 million).

Immigration Fees. The government charges a variety of fees to those who petition to bring a noncitizen to the United States, apply for a visa to enter the country, or adjust status from one visa category to another (such as changing from an H–1B nonimmigrant visa to an employment-based immigrant visa). Many of those fees represent offsets to direct spending when they are collected and are available to Federal agencies for spending—primarily DHS and the Department of State for their immigration-related activities, but also the Department of Labor and National Science Foundation. (Other fees are classified as revenues; they are discussed below.) H.R. 2131 would change immigration fees that represent offsets to direct spending in three ways:

- Change the number of immigrants and nonimmigrants for whom fees are paid.
- Expand the scope of an existing anti-fraud fee to new categories of nonimmigrants.
- Create a new fee related to verifying noncitizens' education credentials.

DHS and the Department of State set the level of many immigration fees on a cost-recovery basis—that is, based on their costs to undertake their immigration-related activities. CBO expects the Department of State would set the new education-related fee on a

cost-recovery basis as well. Although H.R. 2131 would increase the amount of fees collected, it would also increase Federal agencies' spending of those fees by a similar amount—albeit with a short lag between the fee collection and the spending. On net, CBO estimates that enacting H.R. 2131 would reduce direct spending related to the collection and spending of immigration fees by around $400 million over the 2014–2024 period.

Revenues

Enacting H.R. 2131 would have a wide range of effects on Federal revenues, including changes in collections of income taxes, payroll taxes, certain immigration fees that are classified as revenues, and some penalties. Taken together, those effects would increase revenues by $118 billion over the 2014–2024 period, according to estimates by JCT and CBO (see Table 3). For that period, off-budget receipts (of Social Security payroll taxes) would rise by $32 billion, and on-budget receipts would rise by $86 billion. The increase in revenues would primarily reflect additional collections of income and payroll taxes arising from an expansion of the U.S. labor force.

Income, Payroll, and Miscellaneous Taxes. JCT estimates that H.R. 2131 would increase receipts from income taxes, social insurance (payroll) taxes, and certain other taxes by $117 billion over the 2014–2024 period. (That increase includes the effect on revenues of the increase in premium assistance credits that is described above in the section on direct spending for benefit programs.)

Much of the increase in receipts would come from taxes paid on the income of additional workers who entered the country as a result of the bill. As discussed at the beginning of this cost estimate, conventional estimating methodology holds overall economic activity—including output and employment—constant. However, enacting H.R. 2131 would result in a material increase in immigration, leading to a material increase in the supply of labor to the economy. Consequently, JCT and CBO relaxed the conventional assumption of fixed employment for this estimate and included the effects of an expected net increase in employment and total wages.

TABLE 3. ESTIMATED EFFECTS OF H.R. 2131 ON REVENUES

	By Fiscal Year, in Billions of Dollars												
	2014	2015	2016	2017	2018	2019	2020	2021	2022	2023	2024	2014-2019	2014-2024
CHANGES IN REVENUES													
Income and Social Insurance Taxes[a]	0	1.0	3.1	5.6	7.8	10.2	12.9	15.2	17.8	20.0	23.4	27.6	117.0
Unemployment Insurance Taxes	0	*	0.1	0.1	0.1	0.1	0.1	0.1	0.1	0.2	0.2	0.3	1.0
Immigration Fees	0	*	*	*	*	*	*	*	*	*	*	*	0.1
Total Changes	0	1.0	3.1	5.7	7.9	10.3	13.0	15.3	17.9	20.2	23.6	28.0	118.1
On-Budget	0	0.8	2.3	4.2	5.9	7.6	9.7	11.3	13.0	14.4	16.8	20.7	85.9
Off-Budget	0	0.3	0.8	1.5	2.0	2.7	3.4	4.0	4.9	5.8	6.8	7.3	32.1

Sources: Staff of the Joint Committee on Taxation and the Congressional Budget Office.

Note: * = an increase or decrease of less than $50 million; components may not sum to totals because of rounding.

a. Includes changes in revenues associated with subsidies provided through health insurance exchanges and penalty payments by employers and individuals related to health insurance. Does not include receipts from unemployment insurance taxes, which are shown separately.

Many additional adults entering or remaining in the country as a result of H.R. 2131 would have to be employed. Hence, CBO and JCT expect the additional adults to participate in the labor force at a higher rate, on average, than do adults currently in the United States. Spouses of H–1B visa holders allowed to work under the legislation are expected to participate in the labor force at a lower rate, on average, than do adults currently in the United States.

Relative to CBO's projections under current law, enacting H.R. 2131 would increase the size of the labor force by about 850,000 in 2024 and by about 1 million in 2034, CBO and JCT estimate. (The increase in the labor force in 2034 reflects both the increase in the population and the granting of work authorization to spouses of nonimmigrants with H–1B visas that was described above.) Employment would increase as the labor force expanded, because the larger population would boost demand for goods and services and, in turn, the demand for labor.

Unemployment Insurance Taxes. CBO estimates that the expansion of employment under the bill would boost receipts from unemployment insurance taxes—most of which are imposed by states but which yield amounts that are considered to be Federal revenues. CBO estimates that those revenues would increase by about $1 billion from 2014 through 2024. (Spending on unemployment benefits would be about $800 million higher over the 10-year period, as discussed above in the section on direct spending for benefit programs; as a result, the amounts in state trust funds for unemployment insurance would not change much because of the bill.)

Immigration Fees. The government charges a variety of fees related to immigration. Some of those fees are classified as revenues. CBO estimates that the increase in visa applications would boost those revenues by about $70 million over the 2014–2024 period.

Spending Subject to Appropriation

CBO estimates that implementing H.R. 2131 would increase spending subject to appropriation by about $100 million over the 2014–2024 period. All of that spending would be on-budget.

Start-Up Costs. Enacting H.R. 2131 would significantly increase the immigration-related workload for DHS and the Department of State. Those departments would need to rapidly expand their trained workforces and office space to meet the increased demands placed on them by H.R. 2131. Those agencies pay for many of their immigration-related activities through immigration fees they collect. However, relying solely on those fees to pay for the expansion would delay the agencies' ability to expand, increasing processing times and backlogs, and making it difficult to comply with the bill's provisions. Therefore, CBO estimates that lawmakers would have to appropriate up to $50 million to enable the agencies to begin providing the additional visas and work authorizations in fiscal year 2015. We expect that those funds would be spent over the 2015–2019 period.

Pell Grants. Although it includes a mandatory component (discussed above under the heading "Direct Spending"), spending for Pell grants is mostly subject to the appropriation of the necessary amounts. Under the bill, CBO estimates, about $70 million more than the amount under current law would be needed to provide the same maximum award level to students that was provided in 2014 throughout the 2014–2024 period. That amount is in addition to the estimated increase in direct spending for Pell grants.

PAY-AS-YOU-GO CONSIDERATIONS

The Statutory Pay-As-You-Go Act of 2010 establishes budget-reporting and enforcement procedures for legislation affecting direct spending or revenues. The net changes in outlays and revenues that are subject to those pay-as-you-go procedures are shown in the following table. (Only on-budget changes to outlays or revenues are subject to pay-as-you-go procedures.)

TABLE 4. CBO ESTIMATE OF PAY-AS-YOU-GO EFFECTS FOR H.R. 2131 AS ORDERED REPORTED BY THE HOUSE COMMITTEE ON THE JUDICIARY ON JUNE 27, 2013

	By Fiscal Year, in Millions of Dollars												
	2014	2015	2016	2017	2018	2019	2020	2021	2022	2023	2024	2014-2019	2014-2024
NET INCREASE OR DECREASE (-) IN THE ON-BUDGET DEFICIT[a]													
Total On-Budget Changes	0	-0.7	-1.9	-3.4	-4.9	-6.7	-8.7	-10.3	-11.9	-13.3	-16.1	-17.5	-77.7
Memorandum:													
Total Changes in On-Budget Outlays	0	0.1	0.4	0.8	1.0	0.9	0.9	1.0	1.1	1.1	0.7	3.3	8.2
Total Changes in On-Budget Revenues	0	0.8	2.3	4.2	5.9	7.6	9.7	11.3	13.0	14.4	16.8	20.7	85.9

Sources: CBO and the staff of the Joint Committee on Taxation

Notes: Components may not sum to totals because of rounding.

a. H.R. 2131 would also have significant budgetary effects on Social Security, but those effects are classified as "off-budget" and thus are not counted for enforcement under the Statutory Pay-As-You-Go Act of 2010.

ESTIMATED BUDGETARY EFFECTS BEYOND THE FIRST DECADE

After 2024, the increase in the U.S. population under H.R. 2131 would remain close to 1 million, CBO anticipates, but the composition of that increase would change. Starting in 2024, the bill would eliminate the 65,000 immigrant visas available annually under current law to siblings of U.S. citizens (and their dependents); in addition, the cumulative number of immigrants who would have entered the country with diversity visas under current law but would be unable to do so under the bill would continue to rise. However, the cumulative number of immigrants who would enter the country as employment-based immigrants under the bill but could not do so under current law would also continue to rise. Taken together, those factors would keep the total increase in the U.S. population relative to current law close to 1 million in the decade following 2024, but they would shift the composition of those additional people toward people who would be more likely to be employed and would be more likely to earn higher income when employed. In particular, relative to current law, CBO anticipates that H.R. 3121 would reduce the number of foreign-born people with low income and increase the number of foreign-born people with higher income who would be in the United States over the 2025–2034 period.

The change in the composition of the increase in the U.S. population during the 2025–2034 period would alter the budgetary effects. For the 2025–2034 period, CBO and JCT estimate that enacting H.R. 2131 would continue to boost revenues—by over $400 billion—and would reduce deficits by a similar amount. That effect would be almost entirely the result of higher income and payroll taxes stemming from the larger workforce. The impact on direct spending would reverse from the small estimated increase over the first decade to a small estimated decrease over the second decade. That reduction in direct spending would occur primarily because

fewer foreign-born individuals who would be eligible for refundable tax credits and Federal health care programs focused on low-income people would be in the United States than would be the case under current law. The reduction in spending for those programs would more than offset the increase in spending for other programs—notably Social Security and Medicare—that would result from the larger number of people who would be in the United States.

Because the estimates of population changes and budgetary effects that would result from enacting the legislation are very uncertain—even in the first 10 years following enactment—CBO's estimate for the second decade following enactment should be viewed as falling in the middle of a wide range of possible outcomes.

INTERGOVERNMENTAL AND PRIVATE–SECTOR IMPACT

H.R. 2131 would impose intergovernmental and private-sector mandates, as defined in the Unfunded Mandates Reform Act, on employers of temporary foreign workers. CBO estimates that the aggregate costs for both public and private employers to comply with the mandates would fall below the annual thresholds established in UMRA for intergovernmental and private-sector mandates ($76 million and $152 million in 2014, respectively, adjusted annually for inflation).

Employers of some workers from Australia, Canada, Chile, Mexico, and Singapore (those with H–1B1, TN, or E–3 nonimmigrant visas, which are visas related to skilled employment by individuals from certain countries with whom the U.S. has treaties) would be required to pay a fraud detection and prevention fee of $500 per worker they hire. Based on data from DHS and the Department of State, CBO estimates that around 30,000 workers are hired each year in the visa categories to which the fee would apply. Therefore, CBO estimates that the costs to all employers to comply with the mandate would be about $15 million annually.

The bill also would require employers of workers with L–1B or TN visas (about 55,000 workers) and employers of students with certain nonimmigrant student visas receiving postgraduate training (about 60,000 workers) to offer those workers the actual or prevailing wage paid to other workers with similar qualifications and experience. According to information from industry experts and DHS, some employers currently meet that requirement and the expected increase in wages paid by other employers would be small. Therefore, CBO expects that the total costs for both public and private employers to comply with that mandate also would be small.

ESTIMATE PREPARED BY:

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Sam Papenfuss and David Rafferty

Federal Spending
Christi Hawley Anthony, Kirstin Blom, Tom Bradley, Sunita D'Monte, Elizabeth Cove Delisle, Kathleen FitzGerald, Mark Grabowicz, Justin Humphrey, Sarah Masi, David Rafferty, and Martin von Gnechten

Federal Revenues
Mark Booth, Barbara Edwards, and the staff of the Joint Committee on Taxation

Intergovernmental and Private-Sector Impact
Melissa Merrell and Paige Piper/Bach

ESTIMATE APPROVED BY:

Peter H. Fontaine
Assistant Director for Budget Analysis

Duplication of Federal Programs

No provision of H.R. 2131 establishes or reauthorizes a program of the Federal Government known to be duplicative of another Federal program, a program that was included in any report from the Government Accountability Office to Congress pursuant to section 21 of Public Law 111–139, or a program related to a program identified in the most recent Catalog of Federal Domestic Assistance.

Disclosure of Directed Rule Makings

The Committee estimates that H.R. 2131 specifically directs to be completed no specific rule makings within the meaning of 5 U.S.C. 551.

Performance Goals and Objectives

The Committee states that pursuant to clause 3(c)(4) of rule XIII of the Rules of the House of Representatives, H.R. 2131 increases the economic competitiveness of the U.S. and the rationality of our immigration system by increasing the priority given to highly skilled immigrants and to nuclear family members in the issuance of immigrant visas, by creating an immigrant pathway for entrepreneurs, and by reforming our temporary work visa programs to increase the availability of the most talented foreign workers to American employers while strengthening protections for American workers and students.

Advisory on Earmarks

In accordance with clause 9 of rule XXI of the Rules of the House of Representatives, H.R. 2131 does not contain any congressional earmarks, limited tax benefits, or limited tariff benefits as defined in clause 9(e), 9(f), or 9(g) of Rule XXI.

Section-by-Section Analysis

The following discussion describes the bill as reported by the Committee:

Sec. 1. Short title.

This section sets forth the short title of the bill as the "Supplying Knowledge-based Immigrants and Lifting Levels of STEM Visas Act" or the "SKILLS Visa Act."

Sec. 2. Table of Contents.

This section provides a table of contents.

Sec. 3. Sense of Congress.

This section states that it is the sense of Congress that educating American students in STEM fields is crucially important and that fees paid by employers seeking foreign workers should go towards improving STEM education in the U.S.

TITLE 1—IMMIGRANT VISA REFORMS

Sec. 101. Immigrant Visas for Certain Advanced STEM Graduates.

Section 101 provides up to 55,000 immigrant visas a year for foreign graduates of U.S. universities with advanced STEM degrees. Subsection (b) creates an immigrant visa category for aliens who have received STEM doctorates from U.S. universities:

- To be eligible, an alien must 1) have received a doctorate from an eligible U.S. doctoral university in a STEM field or have received a medical, dental or veterinary degree or have completed a medical, dental or veterinary residency at a U.S. university, 2) have taken not less than 85% of their course work (including all Internet courses) while physically present in the United States, and 3) be petitioned for by an employer who has gone through labor certification to show that there are not sufficient American workers able, willing, equally qualified and available for the job (unless this requirement is waived by DHS as in the national interest).
- To be eligible, a doctoral university must: 1) be eligible for Federal student financial aid programs, 2) be accredited, 3) be classified by the Carnegie Foundation for the Advancement of Teaching as a doctorate-granting university with very high or high level of research activity or classified by the National Science Foundation after the date of enactment, pursuant to an application by the university, as having equivalent research activity to such schools, and 4) be at least 10 years old.

Subsection (b) also creates an immigrant visa category for aliens who have received STEM master's degrees from U.S. universities. Any of the immigrant visas not used by aliens with doctorates are available for aliens with master's degrees.

- To be eligible, an alien must: 1) have received a 2-year master's degree from an eligible U.S. doctoral university in a STEM field (or a 5-year combined bachelor's-master's degree program in a STEM field), 2) have majored in college in a STEM field, 3) have not taken less than 85% of their course work (including all Internet courses) while physically present in the United States, and 4) be petitioned for by an employer who has gone through labor certification (unless waived by DHS as in the national interest).
- To be eligible, a university must meet the standards set forth for the doctoral STEM immigrant visa program.

Subsections (c) and (d) provide that unused STEM immigrant visas will flow down first to the second preference employment-based immigrant visa category and next to the third preference employment-based immigrant visa category.

Subsection (e) provides processing standards for petitions for the STEM immigrant visa programs.

Subsection (f) provides, in accord with current regulations, that an employer must as part of the labor certification process submit a job order to the appropriate state workforce agency. In addition, it requires that the state workforce agency post the job order on its official agency website to make it more accessible to American workers seeking employment. These requirements are not limited to only the STEM immigrant visa programs, but apply in all instances in which labor certifications are required. The subsection also provides processing standards for labor certification applications for the STEM immigrant visa programs.

Subsection (g) requires the Government Accountability Office to conduct a study on the use of the National Science Foundation to determine qualifying doctoral institutions under the STEM immigrant visa programs.

Subsection (h) requires that DHS post on its official website information about the employers who sponsor STEM graduates for green cards, the number of STEM graduates they sponsor and the occupations of the STEM graduates they sponsor.

Subsection (i) provides an effective date of October 1, 2013.

Sec. 102. Immigrant Visas for Entrepreneurs.

Subsection (a) creates two new immigrant visa programs for alien entrepreneurs, with a total of 10,000 immigrant visas available a year. The first program is for venture capital or angel investor-backed entrepreneurs who attract investment of at least $500,000 from a qualified venture capital fund or from two or more qualified angel investors. Such entrepreneurs would be given conditional immigrant visas and up to 3 years to create jobs for at least five American workers and raise an additional $1,000,000 in capital or generate not less than $1,000,000 in revenue. The relevant dollar amounts will be subject to inflation adjustments in the future.

The second program is for entrepreneurs who have been operating businesses in the U.S. under the E-2 treaty investor visa program. The E-2 program allows aliens to come to the U.S. temporarily pursuant to a treaty of commerce and navigation with a foreign state of which they are a national (and their spouse and minor children and certain employees) to develop and direct the operations of an enterprise in which they have invested a substantial amount of capital. The E-2 program allows investors to remain in the U.S. indefinitely. Section 102 makes immigrant visas available to E-2 treaty investors who have maintained their status for a minimum of 10 years and have created jobs for at least five America workers for a minimum of 10 years.

Subsection (c) provides that venture capital or angel investor-backed entrepreneurs initially receive conditional permanent residence and sets forth both the procedure and conditions (including the creation of jobs for at least five American workers and the raising of $1,000,000 in additional capital or the generation of not less than $1,000,000 in revenue) for the removal of such conditional status.

Subsection (d) provides an effective date of October 1, 2013.

Sec. 103. Additional Employment-Based Immigrant Visas.

Subsection (c) increases the number of visas available per year for the employment-based second preference immigrant visa category (for members of the professions with advanced degrees and persons of exceptional ability) from 40,040 to 55,040.

Subsection (d) increases the number of visas available per year for the employment-based third preference immigrant visa category (for skilled workers, professionals with bachelor's degrees and other workers) from 40,040 to 55,040.

Subsection (g) provides an effective date of October 1, 2013.

Subsection (h) provides that alien workers in the United States with status under the H-1B, L, or O–1 nonimmigrant visa programs, or foreign students under the F and M nonimmigrant visa programs, who have received optional practical training following completion of their courses of study, and eligible dependents, may file applications for adjustment of status to permanent residence at any time after their petitions for employment-based immigrant visas have been approved, regardless of whether immigrant visas are immediately available. While their applications cannot be approved until immigrant visas become available for them, upon filing they become eligible for immigration benefits such as work authorization.

Sec. 104. Employment Creation Immigrant Visas.

Section 104 makes a number of reforms to the investor immigrant visa program and to the regional center pilot project.

Subsection (a) makes modifications to the program in general:

- The subsection provides that assets acquired directly or indirectly through unlawful means cannot be used to meet the minimum investment requirements of the program.
- The subsection provides that the minimum investment amounts will be increased to reflect the change in value of the dollar from the program's creation in 1990 to the present day and will be prospectively indexed for future inflation.
- The subsection provides that the required jobs must actually exist at the time that the conditional status is removed and allows DHS to extend the conditional status for an additional year in order to give an investor additional time to create the required jobs.[112]

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[112] Since many of the economic models that are used to demonstrate job creation for regional centers do not consider the temporal aspects of job creation, in such cases:

> USCIS may presume that the jobs will be created within the required period of time provided that the alien can demonstrate compliance with paragraph (ii) below.
>
> (ii) Many economic models used to demonstrate indirect job creation rely on certain assumptions or variables to show the requisite job creation. For example, a model might demonstrate that the requisite jobs will be created if a Regional Center infuses $10 million into a particular industry. Similarly, a model might demonstrate that, using accepted multipliers, the creation of 100 direct jobs will result in a certain number of indirect jobs. Under such circumstances, the I-526 petition should demonstrate that the required infusion of capital or the creation of the direct jobs will occur within 2 years.
>
> *EB-5 Alien Entrepreneurs—Job Creation and Full-Time Positions (AFM Update AD 09–04)* at 4–5.
>
> U.S.C.I.S.'s policy is appropriate for determining that jobs actually exist for purposes of subsection (a).

- The subsection provides that 1) a "targeted employment area" must fit entirely within a geographical unit that the Labor Department has determined has an unemployment rate of at least 150 percent of the national rate, 2) the Secretary of Labor shall set forth a uniform methodology for determining whether an area qualifies as having unemployment of at least 150 percent of the national rate, and 3) DHS is not bound by the decision of any other entity that a particular area has experienced high unemployment.

Subsection (b) makes modifications to the regional center pilot project:

- The subsection makes permanent the regional center pilot program, which currently sunsets in 2015.
- The subsection bars persons from involvement in regional centers who 1) have committed crimes that are considered aggravated felonies under the Immigration and Nationality Act, 2) would be inadmissible pursuant to the security and terrorism-related grounds of inadmissibility (if they were aliens seeking admission), or 3) have been convicted of criminal securities fraud or have been found to have engaged in civil securities fraud.
- The subsection clarifies and expands DHS's authority to perform criminal records and background checks on regional center managers, members, owners, administrators, and others who have significant responsibility in the regional center. DHS may terminate regional centers from participation in the investor visa program if prohibited persons are (to the knowledge of the regional centers) involved in the centers, if the centers fail to provide attestation or information, or provide false attestation or information, in the context of the criminal records or background checks, or if they continue to allow persons to be involved with the centers who have (to the knowledge of the centers) failed to provide such material or have provided false material.
- The subsection requires regional centers to certify compliance with Federal securities laws. DHS shall terminate regional centers for failure to make the necessary certifications and may terminate regional centers for certain securities law violations.

Subsection (c) provides an effective date.

Sec. 105. Family-Sponsored Immigrant Visas.

Section 105 makes a number of changes to the family-sponsored immigrant visa categories.

Subsection (b) increases the number of immigrant visas available per year for the spouses and minor children of permanent residents from 87,934 to 112,934.

Subsection (c) repeals the 65,000 immigrant visas a year category for the siblings of U.S. citizens, and does not allow for the acceptance of new petitions for such status, but does allow beneficiaries with approved petitions to continue to receive visas through fiscal year 2023.

Subsection (d) provides an effective date of October 1, 2013.

Sec. 106. Elimination of the Diversity Immigrant Program.

Section 106 eliminates the up to 55,000 immigrant visas a year diversity immigrant visas category as of the beginning of fiscal year 2014.

Sec. 107. Numerical Limitations to any Single Foreign State.

Section 107 eliminates the employment-based immigrant visa per-country cap entirely and raises the family-sponsored immigrant visa per-country cap from 7% to 15% as of October 1, 2013.

Sec. 108. Physicians.

Section 108 contains a number of modifications to the "Conrad 30" program:

Subsection (a) makes the program permanent.

Subsection (b) allocates a state 35 waivers requested by interested state agencies for a fiscal year if 90% of the waivers available to the state were used in the previous year. When this occurs, the state is allotted an additional five such waivers for each subsequent year where 90% of the waivers available to the state were used in the previous year, except that if a state is allotted 60 or more waivers in a year, the state is eligible for the additional five waivers only if 90% of the waivers available to all states receiving at least one such waiver were used in the previous year. These allotment increases shall be maintained indefinitely, unless if in a year, the total number of such waivers granted is 5% lower than in the last year in which there was an increase in the number of waivers allotted. In such a case, the number of waivers allotted shall be decreased by five for all states beginning in the next year and each additional 5% decrease in waivers granted from the last year in which there was in increase shall result in an additional decrease of five waivers allotted for all states (with a floor for each state of 30 waivers). Subsection (b) also provides an additional three waivers per state that can only be used at academic medical centers (not necessarily in areas with a shortage of health care professionals) if the work performed by the physicians will be in the public interest.

Subsection (c) adds a number of employment protections for physicians in the program:

- Under current law, physicians may change employers (for the remainder of their 3 year service obligation) under "extenuating circumstances" as designated by DHS. The subsection also allows the state agency requesting the waiver to attest to extenuating circumstances. In addition, the subsection allows physicians to change employers without such a determination if they agree to perform an additional year of service in underserved areas.
- The physicians' employment contracts shall specify the number of on-call hours they must work and the compensation they will receive for on-call time, whether the employer will provide malpractice insurance and pay for the premiums, and the specific facilities at which the doctors will work (which can only be added to with the approval of the Federal

or state agency that requested the waiver). A contract cannot include non-compete provisions.

- Physicians whose employment is terminated will have 120 days to submit applications or petitions to begin new employment in underserved areas before being considered out of status.

Subsection (d) makes additional changes:

- The subsection provides that aliens entering the country on a J visa to receive graduate medical education or training or to take an examination needed to receive such education or training need not show that they have no intent to immigrate permanently.
- The subsection provides that physicians can perform their J waiver service in any authorized status, rather than just under the H-1B visa program as under current law.
- Currently, physicians who have worked in underserved areas for 5 years and who agree to continue to work in such areas are eligible for the national interest waiver of the requirements of employer sponsorship for green cards and the labor certification process if their work in these areas have been found to be in the public interest. The subsection clarifies that specialists are eligible. It also provides that physicians can serve in facilities that serve patients who reside in underserved areas that are not themselves located in such areas if their work is in the public interest (and that the public interest requirement does not have to be met if the physicians work at facilities that are located in such areas). The subsection provides that the 5 years of required service begins when the doctor begins employment in any legal status (including while pursuing graduate medical education), not when the immigrant visa application is filed or approved. Physicians can change work locations without having to file additional immigrant visa petitions.
- Appropriate foreign medical degrees qualify as advanced degrees for purposes of the employment-based second preference green card program for members of the professions with advanced degrees.
- Physicians who would lose their visa status due to the timing gap between when they finish their training and when they are able to obtain a work visa, would maintain their status until the beginning of the next fiscal year (i.e. from the spring to the fall).
- Spouses and children of physicians on J visas would not be subject to the 2-year home country return requirement.

Sec. 109. Permanent Priority Dates.

Section 109 codifies the practice that the priority date (for determining an alien's place in line) for an employer's immigrant visa petition is the date that the employer files the labor certification application. It also ensures that an alien who switches from one employment-based category to another retains their original priority date.

Sec. 110. Set-Aside for Health Care Workers

Section 110 provides that not less than 4,000 of the employment-based third preference immigrant visas available each year will be reserved for nurses and other non-physician health-care workers required to provide a certification (pursuant to section 212(a)(5)(C) or (r) of the INA) who will be working in a rural area or a health professional shortage area. If not all of these reserved visas are so utilized in a fiscal year, they will be issued within the first 45 days of the next fiscal year to aliens eligible for third preference visas who had applied for such visas during the fiscal year.

TITLE II—NON-IMMIGRANT VISA REFORMS

Sec. 201. H-1B Visas.

Subsection (a) raises the annual H-1B cap to 155,000 and increases the 20,000 special allotment for graduates of U.S. universities with advanced degrees to 40,000 (and limits eligibility for the special allotment to STEM graduates who meet the standards set forth in section 101 for the STEM immigrant visa programs).

Subsection (b) provides that in certain instances, employers of H-1B workers do not have to pay the H-1B workers the prevailing wage (if higher than the actual wage the employers pay workers with similar experience and qualifications for the employment in question). If 80 percent or more of the employer's workers in the same occupational classification as the H-1B worker and in the same area of employment as the H-1B worker are United States workers, an employer must pay the H-1B worker wages that are at least the actual wage level paid by the employer to all other individuals with similar experience and qualifications for the specific employment in question (but, in the case of an employer with more than 25 employees, in no event shall such wages be lower than the mean of the lowest one-half of wages surveyed pursuant to the prevailing wage calculation (found at section 212(p)(5) of the INA).

Subsection (c) allows spouses of H-1B workers to work in the U.S.

Subsection (d) adds anti-fraud provisions:

- The subsection provides that the college degree requirement for H-1B, E-3 and H-1B1 visas can be met only with a foreign degree that is a recognized foreign equivalent of that degree. In the case of prospective workers with foreign degrees, the State Department shall determine the equivalence of the degree to a U.S. degree and verify the authenticity of the foreign degree (and may utilize public or private entities to conduct such verification and impose a fee on petitioning employers to cover investigative costs).
- The subsection allows the Department of Labor to conduct random audits of H-1B, E-3 and H-1B1 employers to ensure compliance with the terms of the program. However, an employer who has been subject to two random investigations may not be subject to another random investigation within 4 years of the second investigation unless the employer was found in the previous investigations or otherwise to have committed certain violations.

- The subsection requires that employers of H-1B, E-3 and H-1B1 workers (unless they are institutions of higher education or governmental or nonprofit entities) show that they maintain places of business in the United States that are licensed in accordance with any applicable state or local business licensing requirements and that are used exclusively for business purposes. Businesses must also show that they have assets of not less than $50,000 or (to allow start-ups to participate in the H-1B program) provide documentation of business activity.
- The subsection provides the Department of Labor with authority to issue subpoenas to employers to ensure they are meeting the requirements of the H-1B, E-3 and H-1B1 programs.

Subsection (e) requires that aliens coming to the United States to perform work in specialty occupations must utilize H-1B visas.

Sec. 202. L Visas.

Section 202 applies the H-1B program's wage and working condition requirement to L visa aliens who will serve in a capacity involving specialized knowledge for a cumulative period of time in excess of 6 months over a 2-year period. However, in instances where the employer is exempted from the prevailing wage requirement, employers with more than 25 employees are not required to pay wages equal or higher than the mean of the lowest one-half of wages surveyed pursuant to the prevailing wage calculation (as they are in the H-1B program).

In complying with the prevailing wage requirement, an employer may keep the alien on their home country payroll, take into account the value of wages and benefits paid by the employer to the alien in the currency of the alien's home country, employer-provided housing or housing allowances, employer-provided vehicles or transportation allowances, and other benefits provided to the alien as an incident of the assignment in the United States.

The Labor Department has the same investigatory and enforcement powers to ensure compliance as it has in the H-1B program.

Sec. 203. O Visas.

O visas are temporary visas for aliens who have extraordinary ability in the sciences, arts, education, business, or athletics or in motion picture and television or who seek to come to the U.S. to accompany and assist in the artistic or athletic performance of such aliens and have critical skills needed for the performance. Section 203 makes a number of modifications to the O visa program:

- The section allows O visa recipients with extraordinary abilities to begin working for a new employer upon the new employer's filing of a non-frivolous petition.
- An O petition for an alien with extraordinary ability must be filed with a written advisory opinion or "consultation" issued by a union or peer group with expertise in the alien's area of specialty. Currently, a petition for an alien with extraordinary ability in the "live arts" may be filed without a consultation, if the alien had previously received an O visa, has

received a consultation within the last 2 years, and seeks to perform similar services. The section extends this waiver authority to aliens with extraordinary ability in motion pictures or television, and extends the validity period for a prior consultation from two to 3 years.

- Organizations providing consultations are not currently notified of the outcome of the O visa applications for the aliens subject to the consultations. The section requires the provision of notice.

Sec. 204. Mexican and Canadian Professionals

Section 204 applies the H-1B program's wage and working condition requirements to Mexican and Canadian professionals under the North American Free Trade Agreement. The Labor Department has the same investigatory and enforcement powers to ensure compliance as it has in the H-1B program.

Section 205. (H)(i)(b1) and E-3 Visas

Section 205 applies the H-1B program's wage and working condition requirements to the H-1B1 (Chile and Singapore) and E-3 (Australia) visa program.

Sec. 206. Students

Subsection (a) allows foreign students to receive student visas to attend college in STEM fields without having to demonstrate to consular officers that they have no desire to stay permanently in the U.S.

Subsection (b) applies the H-1B program's wage and working condition requirement to foreign students working in post-graduation optional practical training programs. The Labor Department has the same investigatory and enforcement powers to ensure compliance as it has in the H-1B program.

Sec. 207. Extension of Employment Eligibility While Visa Extension Petition Pending

Currently, by regulation, individuals who are employed in certain nonimmigrant visa classifications but whose work authorization has expired receive an automatic 240-day extension to continue working for the same employer provided the employer has filed a timely extension petition. Section 207 codifies this practice, extending its applicability to two new visa categories, and retains DHS's authority to add additional visa categories.

Sec. 208. Fraud Detection and Prevention Fee

Section 208 provides that the H-1B fraud prevention fee shall also apply to the E-3, H-1B1 and NAFTA professional visa programs.

Sec. 209. Technical Corrections

This section makes a technical correction to current law.

TITLE III—REFORMS AFFECTING BOTH IMMIGRANT AND NONIMMIGRANT VISAS

Sec. 301. Prevailing Wages

Section modifies the calculation of the prevailing wage for the labor certification process for employment-based immigrant visas, the E-3, H-1B, H-1B1, L, and NAFTA nonimmigrant visa programs and for optional practical training. The Labor Department shall make available to employers a governmental survey to determine the prevailing wage for each occupational classification by metropolitan statistical area. That survey, or other survey approved by the Department, shall provide three levels of wages commensurate with experience, education, and level of supervision. The first level shall be the mean of the lowest two-thirds of wages surveyed, but in no case less than 80 percent of the mean of the wages surveyed. The second level shall be the mean of wages surveyed. The third level shall be the mean of the highest two-thirds of wages surveyed. The appropriate level for a particular position will depend on the experience, education and level of supervision required for the position.

In order to determine the prevailing wage, an employer may use a survey provided by the Labor Department or an independent authoritative survey approved by the Department for use in determining the prevailing wage if the survey meets certain conditions.

Sec. 302. Streamlining Petitions for Established Employers

Section 302 requires DHS to establish a pre-certification procedure for employers who file multiple petitions for temporary visas for alien workers or for immigrant visas that would enable an employer to avoid repeatedly submitting documentation that is common to multiple petitions and establish, through a single filing, criteria relating to the employer and the offered employment opportunity.

Changes in Existing Law Made by the Bill, as Reported

In compliance with clause 3(e) of rule XIII of the Rules of the House of Representatives, changes in existing law made by the bill, as reported, are shown as follows (existing law proposed to be omitted is enclosed in black brackets, new matter is printed in italics, existing law in which no change is proposed is shown in roman):

IMMIGRATION AND NATIONALITY ACT

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this Act, divided into titles, chapters, and sections according to the following table of contents, may be cited as the "Immigration and Nationality Act".

TABLE OF CONTENTS

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TITLE II—IMMIGRATION

* * * * * * *

CHAPTER 2—QUALIFICATIONS FOR ADMISSION OF ALIENS; TRAVEL CONTROL OF CITIZENS AND ALIENS

* * * * * * *

[Sec. 216A. Conditional permanent resident status for certain alien entrepreneurs, spouses, and children.]

Sec. 216A. Conditional permanent resident status for certain alien investors, spouses, and children.

Sec. 216B. Conditional permanent resident status for certain alien entrepreneurs, spouses, and children.

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TITLE I—GENERAL

DEFINITIONS

SECTION 101. (a) As used in this Act—

(1) * * *

* * * * * * *

(15) The term "immigrant" means every alien except an alien who is within one of the following classes of nonimmigrant aliens—

(A) * * *

* * * * * * *

[(F)(i) an alien having a residence in a foreign country which he has no intention of abandoning, who is a bona fide student qualified to pursue a full course of study and who seeks to enter the United States temporarily and solely for the purpose of pursuing such a course of study consistent with section 214(l) at an established college, university, seminary, conservatory, academic high school, elementary school, or other academic institution or in an accredited language training program in the United States, particularly designated by him and approved by the Attorney General after consultation with the Secretary of Education, which institution or place of study shall have agreed to report to the Attorney General the termination of attendance of each nonimmigrant student, and if any such institution of learning or place of study fails to make reports promptly the approval shall be withdrawn, (ii) the alien spouse and minor children of any alien described in clause (i) if accompanying or following to join such an alien, and (iii) an alien who is a national of Canada or Mexico, who maintains actual residence and place of abode in the country of nationality, who is described in clause (i) except that the alien's qualifications for and actual course of study may be full or part-time, and who commutes to the United States institution or place of study from Canada or Mexico;]

(F) an alien—

(i) who—

(I) is a bona fide student qualified to pursue a full course of study in a field of science, technology, engineering, or mathematics (as defined in section 203(b)(6)(B)(ii)) leading to a bachelors or graduate degree and who seeks to enter the United States for the purpose of pursuing such a course of study consistent

with section 214(m) at an institution of higher education (as described in section 101(a) of the Higher Education Act of 1965 (20 U.S.C. 1001(a))) or a proprietary institution of higher education (as defined in section 102(b) of such Act (20 U.S.C. 1002(b))) in the United States, particularly designated by the alien and approved by the Secretary of Homeland Security, after consultation with the Secretary of Education, which institution shall have agreed to report to the Secretary of Homeland Security the determination of attendance of each nonimmigrant student, and if any such institution fails to make reports promptly the approval shall be withdrawn; or

(II) is engaged in temporary employment for optional practical training related to such alien's area of study following completion of the course of study described in subclause (I);

(ii) who—

(I) has a residence in a foreign country which the alien has no intention of abandoning, who is a bona fide student qualified to pursue a full course of study, and who seeks to enter the United States temporarily and solely for the purpose of pursuing such a course of study consistent with section 214(m) at an established college, university, seminary, conservatory, academic high school, elementary school, or other academic institution or in a language training program in the United States, particularly designated by the alien and approved by the Secretary of Homeland Security, after consultation with the Secretary of Education, which institution of learning or place of study shall have agreed to report to the Secretary of Homeland Security the determination of attendance of each nonimmigrant student, and if any such institution of learning or place of study fails to make reports promptly the approval shall be withdrawn; or

(II) is engaged in temporary employment for optional practical training related to such alien's area of study following completion of the course of study described in subclause (I);

(iii) who is the spouse or minor child of an alien described in clause (i) or (ii) if accompanying or following to join such an alien; or

(iv) who is a national of Canada or Mexico, who maintains actual residence and place of abode in the country of nationality, who is described in clause (i) or (ii) except that the alien's qualifications for and actual course of study may be full or part-time, and who commutes to the United States institution or place of study from Canada or Mexico;

* * * * * * *

TITLE II—IMMIGRATION

CHAPTER 1—SELECTION SYSTEM

* * * * * * *

SEC. 201. (a) IN GENERAL.—Exclusive of aliens described in subsection (b), aliens born in a foreign state or dependent area who may be issued immigrant visas or who may otherwise acquire the status of an alien lawfully admitted to the United States for permanent residence are limited to—

(1) family-sponsored immigrants described in section 203(a) (or who are admitted under section 211(a) on the basis of a prior issuance of a visa to their accompanying parent under section 203(a)) in a number not to exceed in any fiscal year the number specified in subsection (c) for that year, and not to exceed in any of the first 3 quarters of any fiscal year 27 percent of the worldwide level under such subsection for all of such fiscal year; *and*

(2) employment-based immigrants described in section 203(b) (or who are admitted under section 211(a) on the basis of a prior issuance of a visa to their accompanying parent under section 203(b)), in a number not to exceed in any fiscal year the number specified in subsection (d) for that year, and not to exceed in any of the first 3 quarters of any fiscal year 27 percent of the worldwide level under such subsection for all of such fiscal year**[**; and**]**.

[(3) for fiscal years beginning with fiscal year 1995, diversity immigrants described in section 203(c) (or who are admitted under section 211(a) on the basis of a prior issuance of a visa to their accompanying parent under section 203(c)) in a number not to exceed in any fiscal year the number specified in subsection (e) for that year, and not to exceed in any of the first 3 quarters of any fiscal year 27 percent of the worldwide level under such subsection for all of such fiscal year.**]**

* * * * * * *

(c) WORLDWIDE LEVEL OF FAMILY-SPONSORED IMMIGRANTS.—(1)(A) The worldwide level of family-sponsored immigrants under this subsection for a fiscal year is, subject to subparagraph (B), equal to—

(i) **[**480,000,**]** *480,000 in fiscal years through 2013, 505,000 beginning in fiscal year 2014 through fiscal year 2023, and 440,000 beginning in fiscal year 2024,* minus

* * * * * * *

(B)(i) * * *

(ii) In no case shall the number computed under subparagraph (A) be less than **[**226,000.**]** *226,000 in fiscal years through 2013, 251,000 beginning in fiscal year 2014 through fiscal year 2023, and 186,000 beginning in fiscal year 2024.*

* * * * * * *

(d) WORLDWIDE LEVEL OF EMPLOYMENT-BASED IMMIGRANTS.—(1) The worldwide level of employment-based immigrants under this subsection for a fiscal year is equal to—

(A) **[**140,000,**]** *140,000 in fiscal years through 2013 and 235,000 beginning in fiscal year 2014, reduced for any fiscal*

year beginning in fiscal year 2014 by the number by which the number of visas under section 201(e) would have been reduced in that year pursuant to section 203(d) of the Nicaraguan Adjustment and Central American Relief Act (8 U.S.C. 1151 note) if section 201(e) had not been repealed by section 106 of the SKILLS Visa Act, plus

* * * * * * *

[(e) WORLDWIDE LEVEL OF DIVERSITY IMMIGRANTS.—The worldwide level of diversity immigrants is equal to 55,000 for each fiscal year.]

* * * * * * *

NUMERICAL LIMITATION TO ANY SINGLE FOREIGN STATE

SEC. 202. (a) PER COUNTRY LEVEL.—

(1) * * *

(2) PER COUNTRY LEVELS FOR FAMILY-SPONSORED [AND EMPLOYMENT-BASED] IMMIGRANTS.—Subject to paragraphs [(3), (4), and (5),] *(3) and (4),* the total number of immigrant visas made available to natives of any single foreign state or dependent area under [subsections (a) and (b) of section 203] *section 203(a)* in any fiscal year may not exceed [7] *15* percent (in the case of a single foreign state) or 2 percent (in the case of a dependent area) of the total number of such visas made available under [such subsections] *such section* in that fiscal year.

(3) EXCEPTION IF ADDITIONAL VISAS AVAILABLE.—If because of the application of paragraph (2) with respect to one or more foreign states or dependent areas, the total number of visas available under [both subsections (a) and (b) of section 203] *section 203(a)* for a calendar quarter exceeds the number of qualified immigrants who otherwise may be issued such a visa, paragraph (2) shall not apply to visas made available to such states or areas during the remainder of such calendar quarter.

* * * * * * *

[(5) RULES FOR EMPLOYMENT-BASED IMMIGRANTS.—

[(A) EMPLOYMENT-BASED IMMIGRANTS NOT SUBJECT TO PER COUNTRY LIMITATION IF ADDITIONAL VISAS AVAILABLE.—If the total number of visas available under paragraph (1), (2), (3), (4), or (5) of section 203(b) for a calendar quarter exceeds the number of qualified immigrants who may otherwise be issued such visas, the visas made available under that paragraph shall be issued without regard to the numerical limitation under paragraph (2) of this subsection during the remainder of the calendar quarter.

[(B) LIMITING FALL ACROSS FOR CERTAIN COUNTRIES SUBJECT TO SUBSECTION (e).—In the case of a foreign state or dependent area to which subsection (e) applies, if the total number of visas issued under section 203(b) exceeds the maximum number of visas that may be made available to immigrants of the state or area under section 203(b) consistent with subsection (e) (determined without regard to this paragraph), in applying subsection (e) all visas

shall be deemed to have been required for the classes of aliens specified in section 203(b).]

* * * * * * *

[(e) SPECIAL RULES FOR COUNTRIES AT CEILING.—If it is determined that the total number of immigrant visas made available under subsections (a) and (b) of section 203 to natives of any single foreign state or dependent area will exceed the numerical limitation specified in subsection (a)(2) in any fiscal year, in determining the allotment of immigrant visa numbers to natives under subsections (a) and (b) of section 203, visa numbers with respect to natives of that state or area shall be allocated (to the extent practicable and otherwise consistent with this section and section 203) in a manner so that—

[(1) the ratio of the visa numbers made available under section 203(a) to the visa numbers made available under section 203(b) is equal to the ratio of the worldwide level of immigration under section 201(c) to such level under section 201(d);

[(2) except as provided in subsection (a)(4), the proportion of the visa numbers made available under each of paragraphs (1) through (4) of section 203(a) is equal to the ratio of the total number of visas made available under the respective paragraph to the total number of visas made available under section 203(a), and

[(3) except as provided in subsection (a)(5), the proportion of the visa numbers made available under each of paragraphs (1) through (5) of section 203(b) is equal to the ratio of the total number of visas made available under the respective paragraph to the total number of visas made available under section 203(b).

Nothing in this subsection shall be construed as limiting the number of visas that may be issued to natives of a foreign state or dependent area under section 203(a) or 203(b) if there is insufficient demand for visas for such natives under section 203(b) or 203(a), respectively, or as limiting the number of visas that may be issued under section 203(a)(2)(A) pursuant to subsection (a)(4)(A).]

(e) SPECIAL RULES FOR COUNTRIES AT CEILING.—If it is determined that the total number of immigrant visas made available under section 203(a) to natives of any single foreign state or dependent area will exceed the numerical limitation specified in subsection (a)(2) in any fiscal year, in determining the allotment of immigrant visa numbers to natives under section 203(a), visa numbers with respect to natives of that state or area shall be allocated (to the extent practicable and otherwise consistent with this section and section 203) in a manner so that, except as provided in subsection (a)(4), the proportion of the visa numbers made available under each of paragraphs (1) through (4) of section 203(a) is equal to the ratio of the total number of visas made available under the respective paragraph to the total number of visas made available under section 203(a).

ALLOCATION OF IMMIGRANT VISAS

SEC. 203. (a) PREFERENCE ALLOCATION FOR FAMILY-SPONSORED IMMIGRANTS.—Aliens subject to the worldwide level specified in

section 201(c) for family-sponsored immigrants shall be allotted visas as follows:

(1) UNMARRIED SONS AND DAUGHTERS OF CITIZENS.—Qualified immigrants who are the unmarried sons or daughters of citizens of the United States shall be allocated visas in a number not to exceed [23,400, plus any visas not required for the class specified in paragraph (4).] *23,400.*

(2) SPOUSES AND UNMARRIED SONS AND UNMARRIED DAUGHTERS OF PERMANENT RESIDENT ALIENS.—Qualified immigrants—

(A) * * *

* * * * * * *

shall be allocated visas in a number not to exceed [114,200,] *139,200,* plus the number (if any) by which such worldwide level exceeds [226,000,] *226,000 in fiscal years through 2013, 251,000 beginning in fiscal year 2014 through fiscal year 2023, and 186,000 beginning in fiscal year 2024,* plus any visas not required for the class specified in paragraph (1); except that not less than [77] *81.13* percent of such visa numbers shall be allocated to aliens described in subparagraph (A).

* * * * * * *

[(4) BROTHERS AND SISTERS OF CITIZENS.—Qualified immigrants who are the brothers or sisters of citizens of the United States, if such citizens are at least 21 years of age, shall be allocated visas in a number not to exceed 65,000, plus any visas not required for the classes specified in paragraphs (1) through (3).]

(b) PREFERENCE ALLOCATION FOR EMPLOYMENT-BASED IMMIGRANTS.—Aliens subject to the worldwide level specified in section 201(d) for employment-based immigrants in a fiscal year shall be allotted visas as follows:

(1) PRIORITY WORKERS.—Visas shall first be made available in a number not to exceed [28.6 percent of such worldwide level,] *40,040,* plus any visas not required for the classes specified in paragraphs (4) and (5), to qualified immigrants who are aliens described in any of the following subparagraphs (A) through (C):

(A) * * *

* * * * * * *

(2) ALIENS WHO ARE MEMBERS OF THE PROFESSIONS HOLDING ADVANCED DEGREES OR ALIENS OF EXCEPTIONAL ABILITY.—

(A) IN GENERAL.—Visas shall be made available, in a number not to exceed [28.6 percent of such worldwide level,] *55,040,* plus any visas not required for the classes specified in [paragraph (1),] *paragraphs (1), (6), (7), and (8),* to qualified immigrants who are members of the professions holding advanced degrees or their equivalent or who because of their exceptional ability in the sciences, arts, or business, will substantially benefit prospectively the national economy, cultural or educational interests, or welfare of the United States, and whose services in the sciences, arts, professions, or business are sought by an employer in the United States. *An alien physician holding*

a foreign medical degree that has been deemed sufficient for acceptance by an accredited United States medical residency or fellowship program is a member of the professions holding an advanced degree or its equivalent.

(B)(i) * * *

(ii)(I) The Attorney General shall grant a national interest waiver pursuant to clause (i) on behalf of any alien physician with respect to whom a petition for preference classification has been filed under subparagraph (A) if—

[(aa) the alien physician agrees to work full time as a physician in an area or areas designated by the Secretary of Health and Human Services as having a shortage of health care professionals or at a health care facility under the jurisdiction of the Secretary of Veterans Affairs; and

[(bb) a Federal agency or a department of public health in any State has previously determined that the alien physician's work in such an area or at such facility was in the public interest.**]**

(aa) the alien physician agrees to work on a full-time basis practicing primary care, specialty medicine, or a combination thereof, in an area or areas designated by the Secretary of Health and Human Services as having a shortage of health care professionals, or at a health care facility under the jurisdiction of the Secretary of Veterans Affairs; or

(bb) the alien physician is pursuing such waiver based upon service at a facility or facilities that serve patients who reside in a geographic area or areas designated by the Secretary of Health and Human Services as having a shortage of health care professionals (without regard to whether such facility or facilities are located within such an area) and a Federal agency, or a local, county, regional, or State department of public health determines the alien physician's work was or will be in the public interest.

(II)*(aa)* No permanent resident visa may be issued to an alien physician described in subclause (I) by the Secretary of State under section 204(b), and the Attorney General may not adjust the status of such an alien physician from that of a nonimmigrant alien to that of a permanent resident alien under section 245, until such time as the alien has worked full time as a physician for an aggregate of 5 years (not including the time served in the status of an alien described in section 101(a)(15)(J)), in an area or areas designated by the Secretary of Health and Human Services as having a shortage of health care professionals or at a health care facility under the jurisdiction of the Secretary of Veterans Affairs.

(bb) The 5-year service requirement of item (aa) shall be counted from the date the alien physician begins work in the shortage area in any legal status and not the date an immigrant visa petition is filed or approved. Such service shall be aggregated without re-

gard to when such service began and without regard to whether such service began during or in conjunction with a course of graduate medical education.

(cc) An alien physician shall not be required to submit an employment contract with a term exceeding the balance of the 5-year commitment yet to be served, nor an employment contract dated within a minimum time period prior to filing of a visa petition pursuant to this subsection.

(dd) An alien physician shall not be required to file additional immigrant visa petitions upon a change of work location from the location approved in the original national interest immigrant petition.

* * * * * * *

(3) SKILLED WORKERS, PROFESSIONALS, AND OTHER WORKERS.—

(A) IN GENERAL.—Visas shall be made available, in a number not to exceed [28.6 percent of such worldwide level,] *55,040,* plus any visas not required for the classes specified in [paragraphs (1) and (2),] *paragraphs (1), (2), (6), and (7),* to the following classes of aliens who are not described in paragraph (2):

(i) * * *

* * * * * * *

(iv) HEALTH CARE WORKERS.—Qualified immigrants who are required to submit health care worker certificates pursuant to section 212(a)(5)(C) or certified statements pursuant to section 212(r) and will be working in a rural area or a health professional shortage area (as defined in section 332 of the Public Health Service Act (42 U.S.C. 254e)).

* * * * * * *

(D) SET ASIDE FOR HEALTH CARE WORKERS.—

(i) IN GENERAL.—Not less than 4,000 of the visas made available under this paragraph in each fiscal year shall be reserved for qualified immigrants described in subparagraph (A)(iv).

(ii) UNUSED VISAS.—If the number of visas reserved under clause (i) has not been exhausted at the end of a given fiscal year, the Secretary of Homeland Security shall adjust upwards the numerical limitation in subparagraph (A) for that fiscal year by the amount remaining. Visas may be issued pursuant to such adjustment within the first 45 days of the next fiscal year to aliens who had applied for such visas during the fiscal year for which the adjustment was made.

(4) CERTAIN SPECIAL IMMIGRANTS.—Visas shall be made available, in a number not to exceed [7.1 percent of such worldwide level,] *9,940,* to qualified special immigrants described in section 101(a)(27) (other than those described in subparagraph (A) or (B) thereof), of which not more than 5,000 may be made available in any fiscal year to special immigrants described in subclause (II) or (III) of section 101(a)(27)(C)(ii),

and not more than 100 may be made available in any fiscal year to special immigrants, excluding spouses and children, who are described in section 101(a)(27)(M).

(5) EMPLOYMENT CREATION.—

(A) IN GENERAL.—Visas shall be made available, in a number not to exceed **[**7.1 percent of such worldwide level,**]** *9,940,* to qualified immigrants seeking to enter the United States for the purpose of engaging in a new commercial enterprise (including a limited partnership)—

(i) * * *

* * * * * * *

(B) SET-ASIDE FOR TARGETED EMPLOYMENT AREAS.—

(i) * * *

(ii) TARGETED EMPLOYMENT AREA DEFINED.—In this paragraph, the term "targeted employment area" means, at the time of the investment, a rural area or an area which has experienced high unemployment **[**(of at least 150 percent of the national average rate)**]**.

* * * * * * *

(iv) DEFINITION.—In this paragraph, the term "an area which has experienced high unemployment" means an area which has an unemployment rate of at least 150 of the national average rate. Such an area must fit entirely within a geographical unit that the Secretary of Labor has determined has an unemployment rate of at least 150 percent of the national average rate (and which determination has not been superseded by a later determination in which the Secretary of Labor has found that the unit did not have an unemployment rate of at least 150 percent of the national average rate). The Secretary of Labor shall set forth a uniform methodology for determining whether an area an area qualifies as having experienced unemployment of at least 150 percent of the national average rate. It shall be within the discretion of the Secretary of Homeland Security to determine whether any particular area has experienced high unemployment for purposes of this paragraph, and the Secretary shall not be bound by the determination of any other governmental or non-governmental entity that a particular area has experienced high unemployment for purposes of this paragraph.

(C) AMOUNT OF CAPITAL REQUIRED.—

(i) * * *

* * * * * * *

(iv) CAPITAL DEFINED.—For purposes of this paragraph, the term "capital" does not include any assets acquired, directly or indirectly, by unlawful means.

(v) INFLATION ADJUSTMENT.—

(I) INITIAL ADJUSTMENT.—As of the date of enactment of the SKILLS Visa Act, the amount specified in the first sentence of clause (i) shall be in-

creased by the percentage (if any) by which the Consumer Price Index for the month preceding such enactment date exceeds the Consumer Price Index for the same month of calendar year 1990. The increase described in the preceding sentence shall apply to aliens filing petitions under section 204(a)(1)(H) on or after such enactment date.

(II) SUBSEQUENT ADJUSTMENTS.—Effective for the first fiscal year that begins more than 6 months after the date of the enactment of this clause, and for each fiscal year thereafter, the amount described in subclause (I) (as of the last increase to such amount) shall be increased by the percentage (if any) by which the Consumer Price Index for the month of June preceding the date on which such increase takes effect exceeds the Consumer Price Index for the same month of the preceding calendar year. An increase described in the preceding sentence shall apply to aliens filing petitions under section 204(a)(1)(H) on or after the date on which the increase takes effect.

(III) DEFINITION.—For purposes of this clause, the term "Consumer Price Index" means the Consumer Price Index for all urban consumers published by the Department of Labor.

* * * * * * *

(6) ALIENS HOLDING DOCTORATE DEGREES FROM U.S. DOCTORAL INSTITUTIONS OF HIGHER EDUCATION IN SCIENCE, TECHNOLOGY, ENGINEERING, OR MATHEMATICS.—

(A) IN GENERAL.—Visas shall be made available, in a number not to exceed 55,000, reduced for any fiscal year by the number by which the number of visas under section 201(e) would have been reduced in that year pursuant to section 203(d) of the Nicaraguan Adjustment and Central American Relief Act (8 U.S.C. 1151 note) if section 201(e) had not been repealed by section 106 of the SKILLS Visa Act, plus any visas not required for the classes specified in paragraph (1), to qualified immigrants who—

(i) hold a doctorate degree in a field of science, technology, engineering, or mathematics from a United States doctoral institution of higher education, or have successfully completed a dental, medical, or veterinary residency program (within the summary group of residency programs in the Department of Education's Classification of Instructional Programs taxonomy), have received a medical degree (MD) in a program that prepares individuals for the independent professional practice of medicine (series 51.12 in the Department of Education's Classification of Instructional Programs taxonomy), have received a dentistry degree (DDS, DMD) in a program that prepares individuals for the independent professional practice of dentistry/dental medicine (series 51.04 in the Department of Education's Classification of Instructional Programs taxonomy), have received a veterinary degree (DVM) in a

program that prepares individuals for the independent professional practice of veterinary medicine (series 51.24 in the Department of Education's Classification of Instructional Programs taxonomy), or have received an osteopathic medicine/osteopathy degree (DO) in a program that prepares individuals for the independent professional practice of osteopathic medicine (series 51.19 in the Department of Education's Classification of Instructional Programs taxonomy) from an institution that is described in subclauses (I), (III), and (IV) of subparagraph (B)(iii); and

(ii) have taken not less than 85 percent of the courses required for such degrees, including all courses taken by correspondence (including courses offered by telecommunications) or by distance education, while physically present in the United States.

(B) DEFINITIONS.—For purposes of this paragraph, paragraph (7), and sections 101(a)(15)(F)(i)(I) and 212(a)(5)(A)(iii)(III):

(i) The term "distance education" has the meaning given such term in section 103 of the Higher Education Act of 1965 (20 U.S.C. 1003).

(ii) The term "field of science, technology, engineering, or mathematics" means a field included in the Department of Education's Classification of Instructional Programs taxonomy within the summary groups of computer and information sciences and support services, engineering, biological and biomedical sciences, mathematics and statistics, physical sciences, and the series geography and cartography (series 45.07), advanced/graduate dentistry and oral sciences (series 51.05) and nursing (series 51.38).

(iii) The term "United States doctoral institution of higher education" means an institution that—

(I) is described in section 101(a) of the Higher Education Act of 1965 (20 U.S.C. 1001(a)) or is a proprietary institution of higher education (as defined in section 102(b) of such Act (20 U.S.C. 1002(b)));

(II) was classified by the Carnegie Foundation for the Advancement of Teaching on January 1, 2013, as a doctorate-granting university with a very high or high level of research activity or classified by the National Science Foundation after the date of enactment of this paragraph, pursuant to an application by the institution, as having equivalent research activity to those institutions that had been classified by the Carnegie Foundation as being doctorate-granting universities with a very high or high level of research activity;

(III) has been in existence for at least 10 years; and

(IV) is accredited by an accrediting body that is itself accredited either by the Department of

Education or by the Council for Higher Education Accreditation.

(C) LABOR CERTIFICATION REQUIRED.—

(i) IN GENERAL.—Subject to clause (ii), the Secretary of Homeland Security may not approve a petition filed for classification of an alien under subparagraph (A) unless the Secretary of Homeland Security is in receipt of a determination made by the Secretary of Labor pursuant to the provisions of section 212(a)(5)(A), except that the Secretary of Homeland Security may, when the Secretary deems it to be in the national interest, waive this requirement.

(ii) REQUIREMENT DEEMED SATISFIED.—The requirement of clause (i) shall be deemed satisfied with respect to an employer and an alien in a case in which a certification made under section 212(a)(5)(A)(i) has already been obtained with respect to the alien by that employer.

(7) ALIENS HOLDING MASTER'S DEGREES FROM U.S. DOCTORAL INSTITUTIONS OF HIGHER EDUCATION IN SCIENCE, TECHNOLOGY, ENGINEERING, OR MATHEMATICS.—

(A) IN GENERAL.—Any visas not required for the classes specified in paragraphs (1) and (6) shall be made available to the classes of aliens who—

(i) hold a master's degree in a field of science, technology, engineering, or mathematics from a United States doctoral institution of higher education that was either part of a master's program that required at least 2 years of enrollment or part of a 5-year combined baccalaureate-master's degree program in such field;

(ii) have taken not less than 85 percent of the master's degree courses in a field of science, technology, engineering, or mathematics, including all courses taken by correspondence (including courses offered by telecommunications) or by distance education, while physically present in the United States; and

(iii) hold a baccalaureate degree in a field of science, technology, engineering, or mathematics.

(B) LABOR CERTIFICATION REQUIRED.—

(i) IN GENERAL.—Subject to clause (ii), the Secretary of Homeland Security may not approve a petition filed for classification of an alien under subparagraph (A) unless the Secretary of Homeland Security is in receipt of a determination made by the Secretary of Labor pursuant to the provisions of section 212(a)(5)(A), except that the Secretary of Homeland Security may, when the Secretary deems it to be in the national interest, waive this requirement.

(ii) REQUIREMENT DEEMED SATISFIED.—The requirement of clause (i) shall be deemed satisfied with respect to an employer and an alien in a case in which a certification made under section 212(a)(5)(A)(i) has already been obtained with respect to the alien by that employer.

(C) DEFINITIONS.—The definitions in paragraph (6)(B) shall apply for purposes of this paragraph.

(8) ALIEN ENTREPRENEURS.—

(A) IN GENERAL.—Visas shall be made available, in a number not to exceed 10,000, plus any visas not required for the classes specified in paragraphs (1), (2), and (3), to the following classes of aliens:

(i) VENTURE CAPITAL-BACKED START-UP ENTREPRENEURS.—

(I) IN GENERAL.—An alien is described in this clause if the alien intends to engage in a new commercial enterprise (including a limited partnership) in the United States—

(aa) with respect to which the alien has completed an investment agreement requiring an investment in the enterprise in an amount not less than $500,000, subject to subclause (III), on the part of—

(AA) a venture capital fund whose investment adviser is a qualified venture capital entity; or

(BB) 2 or more qualified angel investors; and

(bb) which will benefit the United States economy and, during the 3-year period beginning on the date on which the visa is issued under this paragraph, will—

(AA) create full-time employment for at least 5 United States workers within the enterprise; and

(BB) raise not less than an additional $1,000,000 in capital investment, subject to subclause (III), or generate not less than $1,000,000 in revenue, subject to subclause (III).

(II) DEFINITIONS.—For purposes of this clause:

(aa) INVESTMENT.—The term "investment" does not include any assets acquired, directly or indirectly, by unlawful means.

(bb) INVESTMENT ADVISER.—The term "investment adviser" has the meaning given such term under section 202(a)(11) of the Investment Advisers Act of 1940 (15 U.S.C. 80b-2(a)(11)).

(cc) QUALIFIED ANGEL INVESTOR.—The term "qualified angel investor" means an individual who—

(AA) is an accredited investor (as defined in section 230.501(a) of title 17, Code of Federal Regulations (as in effect on April 1, 2010));

(BB) is a United States citizen or an alien lawfully admitted to the United States for permanent residence; and

(CC) has made at least 2 investments during the 3 year period before the date of a petition by the qualified immigrant for classification under this paragraph.

(dd) QUALIFIED VENTURE CAPITAL ENTITY.—The term "qualified venture capital entity" means, with respect to a qualified immigrant, an entity that—

(AA) serves as an investment adviser to a venture capital fund that is making an investment under this paragraph;

(BB) has its primary office location or principal place of business in the United States;

(CC) is owned and controlled, directly or indirectly, by individuals the majority of whom are United States citizens or aliens lawfully admitted to the United States for permanent residence;

(DD) has been advising one or more venture capital funds for a period of at least 2 years before the date of the petition for classification under this paragraph; and

(EE) advises one or more venture capital funds that have made at least 2 investments of not less than $500,000 in each of the 2 years before the date of the petition for classification under this paragraph.

(ee) VENTURE CAPITAL FUND.—The term "venture capital fund" means an entity—

(AA) that is classified as a "venture capital operating company" under section 2510.3–101(d) of title 29, Code of Federal Regulations (as in effect on January 1, 2013) or has management rights in its portfolio companies to the extent required by such section if the venture capital fund were classified as a venture capital operating company;

(BB) has capital commitments of not less than $10,000,000; and

(CC) whose general partner or managing member is owned and controlled, directly or indirectly, by individuals the majority of whom are United States citizens or aliens lawfully admitted to the United States for permanent residence.

(III) INFLATION ADJUSTMENT.—Effective for the first fiscal year that begins more than 6 months after the date of the enactment of this clause, and for each fiscal year thereafter, the amounts described in subclauses (I) and (II) shall be increased by the percentage (if any) by which

the Consumer Price Index for the month of June preceding the date on which such increase takes effect exceeds the Consumer Price Index for the same month of the preceding calendar year. An increase described in the preceding sentence shall apply to aliens filing petitions under section 204(a)(1)(H) on or after the date on which the increase takes effect. For purposes of this clause, the term "Consumer Price Index" means the Consumer Price Index for all urban consumers published by the Department of Labor.

(ii) TREATY INVESTORS.—Immigrants who have been issued a visa or otherwise provided nonimmigrant status under section 101(a)(15)(E)(ii) (not including alien employees of the treaty investor) who have maintained that status for a minimum of 10 years and have benefitted the United States economy and created full-time employment for not fewer than 5 United States workers for a minimum of 10 years.

(B) DEFINITIONS.—For purposes of this paragraph:

(i) The term "full-time employment" has the meaning given such term in paragraph (5).

(ii) The term "United States worker" means an employee (other than the immigrant or the immigrant's spouse, sons, or daughters) who—

(I) is a citizen or national of the United States; or

(II) is an alien who is lawfully admitted for permanent residence, is admitted as a refugee under section 207, is granted asylum under section 208, or is an immigrant otherwise authorized to be employed in the United States.

[(6)] *(9)* SPECIAL RULES FOR "K" SPECIAL IMMIGRANTS.—

(A) * * *

* * * * * * *

[(c) DIVERSITY IMMIGRANTS.—

[(1) IN GENERAL.—Except as provided in paragraph (2), aliens subject to the worldwide level specified in section 201(e) for diversity immigrants shall be allotted visas each fiscal year as follows:

[(A) DETERMINATION OF PREFERENCE IMMIGRATION.—The Attorney General shall determine for the most recent previous 5-fiscal-year period for which data are available, the total number of aliens who are natives of each foreign state and who (i) were admitted or otherwise provided lawful permanent resident status (other than under this subsection) and (ii) were subject to the numerical limitations of section 201(a) (other than paragraph (3) thereof) or who were admitted or otherwise provided lawful permanent resident status as an immediate relative or other alien described in section 201(b)(2).

[(B) IDENTIFICATION OF HIGH-ADMISSION AND LOW-ADMISSION REGIONS AND HIGH-ADMISSION AND LOW-ADMISSION STATES.—The Attorney General—

[(i) shall identify—

[(I) each region (each in this paragraph referred to as a "high-admission region") for which the total of the numbers determined under subparagraph (A) for states in the region is greater than 1/6 of the total of all such numbers, and

[(II) each other region (each in this paragraph referred to as a "low-admission region"); and

[(ii) shall identify—

[(I) each foreign state for which the number determined under subparagraph (A) is greater than 50,000 (each such state in this paragraph referred to as a "high-admission state"), and

[(II) each other foreign state (each such state in this paragraph referred to as a "low-admission state").

[(C) DETERMINATION OF PERCENTAGE OF WORLDWIDE IMMIGRATION ATTRIBUTABLE TO HIGH-ADMISSION REGIONS.—The Attorney General shall determine the percentage of the total of the numbers determined under subparagraph (A) that are numbers for foreign states in high-admission regions.

[(D) DETERMINATION OF REGIONAL POPULATIONS EXCLUDING HIGH-ADMISSION STATES AND RATIOS OF POPULATIONS OF REGIONS WITHIN LOW-ADMISSION REGIONS AND HIGH-ADMISSION REGIONS.—The Attorney General shall determine—

[(i) based on available estimates for each region, the total population of each region not including the population of any high-admission state;

[(ii) for each low-admission region, the ratio of the population of the region determined under clause (i) to the total of the populations determined under such clause for all the low-admission regions; and

[(iii) for each high-admission region, the ratio of the population of the region determined under clause (i) to the total of the populations determined under such clause for all the high-admission regions.

[(E) DISTRIBUTION OF VISAS.—

[(i) NO VISAS FOR NATIVES OF HIGH-ADMISSION STATES.—The percentage of visas made available under this paragraph to natives of a high-admission state is 0.

[(ii) FOR LOW-ADMISSION STATES IN LOW-ADMISSION REGIONS.—Subject to clauses (iv) and (v), the percentage of visas made available under this paragraph to natives (other than natives of a high-admission state) in a low-admission region is the product of—

[(I) the percentage determined under subparagraph (C), and

[(II) the population ratio for that region determined under subparagraph (D)(ii).

[(iii) FOR LOW-ADMISSION STATES IN HIGH-ADMISSION REGIONS.—Subject to clauses (iv) and (v), the percentage of visas made available under this paragraph

to natives (other than natives of a high-admission state) in a high-admission region is the product of—

[(I) 100 percent minus the percentage determined under subparagraph (C), and

[(II) the population ratio for that region determined under subparagraph (D)(iii).

[(iv) REDISTRIBUTION OF UNUSED VISA NUMBERS.—If the Secretary of State estimates that the number of immigrant visas to be issued to natives in any region for a fiscal year under this paragraph is less than the number of immigrant visas made available to such natives under this paragraph for the fiscal year, subject to clause (v), the excess visa numbers shall be made available to natives (other than natives of a high-admission state) of the other regions in proportion to the percentages otherwise specified in clauses (ii) and (iii).

[(v) LIMITATION ON VISAS FOR NATIVES OF A SINGLE FOREIGN STATE.—The percentage of visas made available under this paragraph to natives of any single foreign state for any fiscal year shall not exceed 7 percent.

[(F) REGION DEFINED.—Only for purposes of administering the diversity program under this subsection, Northern Ireland shall be treated as a separate foreign state, each colony or other component or dependent area of a foreign state overseas from the foreign state shall be treated as part of the foreign state, and the areas described in each of the following clauses shall be considered to be a separate region:

[(i) Africa.

[(ii) Asia.

[(iii) Europe.

[(iv) North America (other than Mexico).

[(v) Oceania.

[(vi) South America, Mexico, Central America, and the Caribbean.

[(2) REQUIREMENT OF EDUCATION OR WORK EXPERIENCE.—An alien is not eligible for a visa under this subsection unless the alien—

[(A) has at least a high school education or its equivalent, or

[(B) has, within 5 years of the date of application for a visa under this subsection, at least 2 years of work experience in an occupation which requires at least 2 years of training or experience.

[(3) MAINTENANCE OF INFORMATION.—The Secretary of State shall maintain information on the age, occupation, education level, and other relevant characteristics of immigrants issued visas under this subsection.]

(d) TREATMENT OF FAMILY MEMBERS.—A spouse or child as defined in subparagraph (A), (B), (C), (D), or (E) of section 101(b)(1) shall, if not otherwise entitled to an immigrant status and the immediate issuance of a visa under subsection [(a), (b), or (c),] *(a) or (b),* be entitled to the same status, and the same order of consider-

ation provided in the respective subsection, if accompanying or following to join, the spouse or parent.

(e) ORDER OF CONSIDERATION.—(1) * * *

[(2) Immigrant visa numbers made available under subsection (c) (relating to diversity immigrants) shall be issued to eligible qualified immigrants strictly in a random order established by the Secretary of State for the fiscal year involved.**]**

[(3)**]** *(2)* Waiting lists of applicants for visas under this section shall be maintained in accordance with regulations prescribed by the Secretary of State.

(f) AUTHORIZATION FOR ISSUANCE.—In the case of any alien claiming in his application for an immigrant visa to be described in section 201(b)(2) or in subsection **[**(a), (b), or (c)**]** *(a) or (b)* of this section, the consular officer shall not grant such status until he has been authorized to do so as provided by section 204.

(g) LISTS.—For purposes of carrying out the Secretary's responsibilities in the orderly administration of this section, the Secretary of State may make reasonable estimates of the anticipated numbers of visas to be issued during any quarter of any fiscal year within each of the categories under subsections **[**(a), (b), and (c)**]** *(a) and (b)* and to rely upon such estimates in authorizing the issuance of visas. The Secretary of State shall terminate the registration of any alien who fails to apply for an immigrant visa within one year following notification to the alien of the availability of such visa, but the Secretary shall reinstate the registration of any such alien who establishes within 2 years following the date of notification of the availability of such visa that such failure to apply was due to circumstances beyond the alien's control.

* * * * * * *

(i) PERMANENT PRIORITY DATES.—

(1) IN GENERAL.—Subject to subsection (h)(3) and paragraph (2), the priority date for any employment-based petition shall be the date of filing of the petition with the Secretary of Homeland Security (or the Secretary of State, if applicable), unless the filing of the petition was preceded by the filing of a labor certification with the Secretary of Labor, in which case that date shall constitute the priority date.

(2) SUBSEQUENT EMPLOYMENT-BASED PETITIONS.—Subject to subsection (h)(3), an alien who is the beneficiary of any employment-based petition that was approvable when filed (including self-petitioners) shall retain the priority date assigned with respect to that petition in the consideration of any subsequently filed employment-based petition (including self-petitions).

PROCEDURE FOR GRANTING IMMIGRANT STATUS

SEC. 204. (a)(1)(A)(i) Except as provided in clause (viii), any citizen of the United States claiming that an alien is entitled to classification by reason of a relationship described in paragraph **[**(1), (3), or (4)**]** *(1) or (3)* of section 203(a) or to an immediate relative status under section 201(b)(2)(A)(i) may file a petition with the Attorney General for such classification.

* * * * * * *

(F)*(i)* Any employer desiring and intending to employ within the United States an alien entitled to classification under section 203(b)(1)(B), 203(b)(1)(C), 203(b)(2), ⟦or 203(b)(3)⟧ *203(b)(3), 203(b)(6), or 203(b)(7)* may file a petition with the ⟦Attorney General⟧ *Secretary of Homeland Security* for such classification.

(ii) The following processing standards shall apply with respect to petitions under clause (i) relating to alien beneficiaries qualifying under paragraph (6) or (7) of section 203(b):

(I) The Secretary of Homeland Security shall adjudicate such petitions not later than 60 days after the date on which the petition is filed. In the event that additional information or documentation is requested by the Secretary during such 60-day period, the Secretary shall adjudicate the petition not later than 30 days after the date on which such information or documentation is received.

(II) The petitioner shall be notified in writing within 30 days of the date of filing if the petition does not meet the standards for approval. If the petition does not meet such standards, the notice shall include the reasons therefore and the Secretary shall provide an opportunity for the prompt resubmission of a modified petition.

* * * * * * *

(H) Any alien desiring to be classified under ⟦section 203(b)(5)⟧ *paragraph (5) or (8) of section 203(b)* may file a petition with the ⟦Attorney General⟧ *Secretary of Homeland Security* for such classification.

⟦(I)(i) Any alien desiring to be provided an immigrant visa under section 203(c) may file a petition at the place and time determined by the Secretary of State by regulation. Only one such petition may be filed by an alien with respect to any petitioning period established. If more than one petition is submitted all such petitions submitted for such period by the alien shall be voided.

⟦(ii)(I) The Secretary of State shall designate a period for the filing of petitions with respect to visas which may be issued under section 203(c) for the fiscal year beginning after the end of the period.

⟦(II) Aliens who qualify, through random selection, for a visa under section 203(c) shall remain eligible to receive such visa only through the end of the specific fiscal year for which they were selected.

⟦(III) The Secretary of State shall prescribe such regulations as may be necessary to carry out this clause.

⟦(iii) A petition under this subparagraph shall be in such form as the Secretary of State may by regulation prescribe and shall contain such information and be supported by such documentary evidence as the Secretary of State may require.

⟦(iv) Each petition to compete for consideration for a visa under section 1153(c) of this title shall be accompanied by a fee equal to $30. All amounts collected under this clause shall be deposited into the Treasury as miscellaneous receipts.⟧

* * * * * * *

(e) Nothing in this section shall be construed to entitle an immigrant, in behalf of whom a petition under this section is approved, to be admitted the United States as an immigrant under

subsection [(a), (b), or (c)] *(a) or (b)* of section 203 or as an immediate relative under section 201(b) if upon his arrival at a port of entry in the United States he is found not to be entitled to such classification.

* * * * * * *

CHAPTER 2—QUALIFICATIONS FOR ADMISSION OF ALIENS; TRAVEL CONTROL OF CITIZENS AND ALIENS

* * * * * * *

GENERAL CLASSES OF ALIENS INELIGIBLE TO RECEIVE VISAS AND INELIGIBLE FOR ADMISSION; WAIVERS OF INADMISSIBILITY

SEC. 212. (a) CLASSES OF ALIENS INELIGIBLE FOR VISAS OR ADMISSION.—Except as otherwise provided in this Act, aliens who are inadmissible under the following paragraphs are ineligible to receive visas and ineligible to be admitted to the United States:

(1) * * *

* * * * * * *

(5) LABOR CERTIFICATION AND QUALIFICATIONS FOR CERTAIN IMMIGRANTS.—

(A) LABOR CERTIFICATION.—

(i) * * *

(ii) JOB ORDER.—

(I) IN GENERAL.—An employer who files an application under clause (i) shall submit a job order for the labor the alien seeks to perform to the State workforce agency in the State in which the alien seeks to perform the labor. The State workforce agency shall post the job order on its official agency website for a minimum of 30 days and not later than 3 days after receipt using the employment statistics system authorized under section 15 of the Wagner-Peyser Act (29 U.S.C. 49 et seq.).

(II) LINKS.—The Secretary of Labor shall include links to the official websites of all State workforce agencies on a single webpage of the official website of the Department of Labor.

[(ii)] *(iii)* CERTAIN ALIENS SUBJECT TO SPECIAL RULE.—For purposes of clause (i)(I), an alien described in this clause is an alien who—

(I) is a member of the teaching profession[, or]*;*

(II) has exceptional ability in the sciences or the arts[.]*; or*

(III) holds a doctorate degree in a field of science, technology, engineering, or mathematics from a United States doctoral institution of higher education (as defined in section 203(b)(6)(B)(iii)).

[(iii)] *(iv)* PROFESSIONAL ATHLETES.—

(I) * * *

* * * * * * *

[(iv)] *(v)* LONG DELAYED ADJUSTMENT APPLICANTS.—A certification made under clause (i) with re-

spect to an individual whose petition is covered by section 204(j) shall remain valid with respect to a new job accepted by the individual after the individual changes jobs or employers if the new job is in the same or a similar occupational classification as the job for which the certification was issued.

(vi) PROCESSING STANDARDS FOR ALIEN BENEFICIARIES QUALIFYING UNDER PARAGRAPHS (6) AND (7) OF SECTION 203(b).—The following processing standards shall apply with respect to applications under clause (i) relating to alien beneficiaries qualifying under paragraph (6) or (7) of section 203(b):

(I) The Secretary of Labor shall adjudicate such applications not later than 180 days after the date on which the application is filed. In the event that additional information or documentation is requested by the Secretary during such 180-day period, the Secretary shall adjudicate the application not later than 60 days after the date on which such information or documentation is received.

(II) The applicant shall be notified in writing within 60 days of the date of filing if the application does not meet the standards for approval. If the application does not meet such standards, the notice shall include the reasons therefore and the Secretary shall provide an opportunity for the prompt resubmission of a modified application.

* * * * * * *

(D) APPLICATION OF GROUNDS.—The grounds for inadmissibility of aliens under subparagraphs (A) and (B) shall apply to immigrants seeking admission or adjustment of status under paragraph **[**(2) or (3)**]** *(2), (3), (6), or (7)* of section 203(b).

* * * * * * *

(n)(1) No alien may be admitted or provided status as an H–1B nonimmigrant in an occupational classification unless the employer has filed with the Secretary of Labor an application stating the following:

(A) The employer—

(i)*(I) except as provided in subclause (II),* is offering and will offer during the period of authorized employment to aliens admitted or provided status as an H–1B nonimmigrant wages that are at least—

[(I)**]** *(aa)* the actual wage level paid by the employer to all other individuals with similar experience and qualifications for the specific employment in question, or

[(II)**]** *(bb)* the prevailing wage level for the occupational classification in the area of employment,

whichever is greater, based on the best information available as of the time of filing the application**[**, and**]***; or*

(II) if 80 percent or more of the employer's workers in the same occupational classification as the alien admitted or provided status as an H-1B nonimmigrant and in the

same area of employment as the alien admitted or provided status as an H-1B nonimmigrant are United States workers (as defined in paragraph (4)), is offering and will offer during the period of authorized employment to aliens admitted or provided status as an H-1B nonimmigrant wages that are at least the actual wage level paid by the employer to all other individuals with similar experience and qualifications for the specific employment in question (but, in the case of an employer with more than 25 employees, in no event shall such wages be lower than the mean of the lowest one-half of wages surveyed pursuant to subsection (p)(5)); and

* * * * * * *

(2)(A) * * *

* * * * * * *

(F) The Secretary may, on a case-by-case basis, subject an employer to random **[**investigations for a period of up to 5 years, beginning on the date (on or after the date of the enactment of the American Competitiveness and Workforce Improvement Act of 1998) on which the employer is found by the Secretary to have committed a willful failure to meet a condition of paragraph (1) (or has been found under paragraph (5) to have committed a willful failure to meet the condition of paragraph (1)(G)(i)(II)) or to have made a willful misrepresentation of material fact in an application.**]** *investigations. An employer who has been subject to 2 random investigations may not be subject to another random investigation within 4 years of the second investigation unless the employer was found in the previous investigations or otherwise to have committed a willful failure to meet a condition of paragraph (1) (or has been found under paragraph (5) to have committed willful failure to meet the condition of paragraph (1)(G)(i)(II)) or to have made a willful misrepresentation of material fact in an application.* The preceding sentence shall apply to an employer regardless of whether or not the employer is an H–1B-dependent employer. The authority of the Secretary under this subparagraph shall not be construed to be subject to, or limited by, the requirements of subparagraph (A).

* * * * * * *

(J) The Secretary of Labor is authorized to issue subpoenas as may be necessary to assure employer compliance with the terms and conditions of this subsection.

* * * * * * *

(p)(1) In computing the prevailing wage level for an occupational classification in an area of employment for purposes of **[**subsections (a)(5)(A), (n)(1)(A)(i)(II), and (t)(1)(A)(i)(II)**]** *subsections (a)(5)(A), (n)(1)(A)(i)(II), and (t)(1)(A)(i)(II) of this section, and subsections (c)(2)(G), (e), and (s) of section 214,* in the case of an employee of—

(A) * * *

* * * * * * *

(2) In computing the prevailing wage level for an occupational classification in an area of employment for purposes of subsections

(a)(5)(A), (n)(1)(A)(i)(II), and (t)(1)(A)(i)(II) of this section, and subsections (c)(2)(G), (e), and (s) of section 214, the wage level shall be the wage level specified in subparagraph (A), (B), or (C) of paragraph (5) depending on the experience, education, and level of supervision required for the position.

[(2)**]** *(3)* With respect to a professional athlete (as defined in subsection (a)(5)(A)(iii)(II)) when the job opportunity is covered by professional sports league rules or regulations, the wage set forth in those rules or regulations shall be considered as not adversely affecting the wages of United States workers similarly employed and be considered the prevailing wage.

[(3)**]** *(4)* The prevailing wage required to be paid pursuant to **[**subsections (a)(5)(A), (n)(1)(A)(i)(II), and (t)(1)(A)(i)(II)**]** *subsections (a)(5)(A), (n)(1)(A)(i)(II), and (t)(1)(A)(i)(II) of this section, and subsections (c)(2)(G), (e), and (s) of section 214,* shall be 100 percent of the wage determined pursuant to those sections.

[(4) Where the Secretary of Labor uses, or makes available to employers, a governmental survey to determine the prevailing wage, such survey shall provide at least 4 levels of wages commensurate with experience, education, and the level of supervision. Where an existing government survey has only 2 levels, 2 intermediate levels may be created by dividing by 3, the difference between the 2 levels offered, adding the quotient thus obtained to the first level and subtracting that quotient from the second level.**]**

(5) Subject to paragraph (2), the Secretary of Labor shall make available to employers a governmental survey to determine the prevailing wage for each occupational classification by metropolitan statistical area in the United States. Such survey, or other survey approved by the Secretary of Labor, shall provide 3 levels of wages commensurate with experience, education, and level of supervision. Such wage levels shall be determined as follows:

(A) The first level shall be the mean of the lowest two-thirds of wages surveyed, but in no case less than 80 percent of the mean of the wages surveyed.

(B) The second level shall be the mean of wages surveyed.

(C) The third level shall be the mean of the highest two-thirds of wages surveyed.

(6) An employer may use an independent authoritative survey approved by the Secretary of Labor for purposes of paragraph (5), if—

(A) the survey data was collected within 24 months;

(B) the survey was published within the prior 24 months;

(C) the survey reflects the area of intended employment;

(D) the employer's job description adequately matches the job description in the survey;

(E) the survey is across industries that employ workers in the occupation;

(F) the wage determination is based on the arithmetic mean (weighted average); and

(G) the survey identifies a statistically valid methodology that was used to collect the data.

* * * * * * *

(t)(1) No alien may be admitted or provided status as a nonimmigrant under section 101(a)(15)(H)(i)(b1) or section 101(a)(15)(E)(iii) in an occupational classification unless the em-

ployer has filed with the Secretary of Labor an attestation stating the following:

(A) The employer—

(i)*(I) except as provided in subclause (II),* is offering and will offer during the period of authorized employment to aliens admitted or provided status under section 101(a)(15)(H)(i)(b1) or section 101(a)(15)(E)(iii) wages that are at least—

[(I)**]** *(aa)* the actual wage level paid by the employer to all other individuals with similar experience and qualifications for the specific employment in question; or

[(II)**]** *(bb)* the prevailing wage level for the occupational classification in the area of employment,

whichever is greater, based on the best information available as of the time of filing the attestation**[**; and**]***; or*

(II) if 80 percent or more of the employer's workers in the same occupational classification as the alien admitted or provided status under section 101(a)(15)(H)(i)(b1) or 101(a)(15)(E)(iii) and in the same area of employment as the alien admitted or provided status under section 101(a)(15)(H)(i)(b1) or 101(a)(15)(E)(iii) are United States workers (as defined in subsection (n)(4)), is offering and will offer during the period of authorized employment to aliens admitted or provided status under section 101(a)(15)(H)(i)(b1) or section 101(a)(15)(E)(iii) wages that are at least the actual wage level paid by the employer to all other individuals with similar experience and qualifications for the specific employment in question (but, in the case of an employer with more than 25 employees, in no event shall such wages be lower than the mean of the lowest one-half of wages surveyed pursuant to subsection (p)(5)); and

* * * * * * *

(3)(A) * * *

* * * * * * *

(E) The Secretary of Labor may, on a case-by-case basis, subject an employer to random **[**investigations for a period of up to 5 years, beginning on the date on which the employer is found by the Secretary of Labor to have committed a willful failure to meet a condition of paragraph (1) or to have made a willful misrepresentation of material fact in an attestation.**]** *investigations. An employer who has been subject to 2 random investigations may not be subject to another random investigation within 4 years of the second investigation unless the employer was found in the previous investigations or otherwise to have committed a willful failure to meet a condition of paragraph (1) (or has been found under paragraph (5) to have committed willful failure to meet the condition of paragraph (1)(G)(i)(II)) or to have made a willful misrepresentation of material fact in an application.* The authority of the Secretary of Labor under this subparagraph shall not be construed to be subject to, or limited by, the requirements of subparagraph (A).

* * * * * * *

(G) The Secretary of Labor is authorized to issue subpoenas as may be necessary to assure employer compliance with the terms and conditions of this subsection.

* * * * * * *

[(t)**]** *(u)*(1) * * *

* * * * * * *

ADMISSION OF NONIMMIGRANTS

SEC. 214. (a) * * *

(b) Every alien **[**(other than a nonimmigrant described in subparagraph (L) or (V) of section 101(a)(15), and other than a nonimmigrant described in any provision of section 101(a)(15)(H)(i) except subclause (b1) of such section)**]** *(other than a nonimmigrant described in subparagraph (F)(i), (L), or (V) of section 101(a)(15), a nonimmigrant described in any provision of section 101(a)(15)(H)(i), except subclause (b1) of such section, and an alien coming to the United States to receive graduate medical education or training as described in section 212(j) or to take examinations required to receive graduate medical education or training as described in section 212(j))* shall be presumed to be an immigrant until he establishes to the satisfaction of the consular officer, at the time of application for a visa, and the immigration officers, at the time of application for admission, that he is entitled to a nonimmigrant status under section 101(a)(15). An alien who is an officer or employee of any foreign government or of any international organization entitled to enjoy privileges, exemptions, and immunities under the International Organizations Immunities Act, or an alien who is the attendant, servant, employee, or member of the immediate family of any such alien shall not be entitled to apply for or receive an immigrant visa, or to enter the United States as an immigrant unless he executes a written waiver in the same form and substance as is prescribed by section 247(b).

(c)(1) * * *

(2)(A) * * *

* * * * * * *

(E) In the case of an alien spouse admitted under section **[**101(a)(15)(L),**]** *subparagraph (H)(i)(b), (H)(i)(b1), (E)(iii), or (L) of section 101(a)(15)* who is accompanying or following to join a principal alien admitted under such section, the Attorney General shall authorize the alien spouse to engage in employment in the United States and provide the spouse with an "employment authorized" endorsement or other appropriate work permit.

* * * * * * *

(G)(i) An employer of an alien who will serve in a capacity for the employer involving specialized knowledge under section 101(a)(15)(L) for a cumulative period of time in excess of 6 months over a 2-year period—

(I)(aa) except as provided in item (bb), will offer to the alien during the period of authorized employment wages that are at least—

(AA) the actual wage level paid by the employer to all other individuals with similar experience and qualifications for the specific employment in question; or

(BB) the prevailing wage level for the occupational classification in the area of employment, whichever is greater, based on the best information available; or

(bb) if 80 percent or more of the employer's workers in the same occupational classification as the alien and in the same area of employment as the alien are United States workers (as defined in section 212(n)(4)), will offer to the alien during the period of authorized employment wages that are at least the actual wage level paid by the employer to all other individuals with similar experience and qualifications for the specific employment in question; and

(II) will provide working conditions for such alien that will not adversely affect the working conditions of workers similarly employed.

(ii) In complying with the requirements of clause (i), an employer may keep the alien on their home country payroll, and may take into account the value of wages paid by the employer to the alien in the currency of the alien's home country, the value of benefits paid by the employer to the alien in the alien's home country, employer-provided housing or housing allowances, employer-provided vehicles or transportation allowances, and other benefits provided to the alien as an incident of the assignment in the United States.

(iii) The Secretary of Labor shall have the same investigatory and enforcement powers to ensure compliance with this subparagraph as are set forth in section 212(n)(2).

(3) The ⟦Attorney General⟧ *Secretary of Homeland Security* shall approve a petition—

(A) * * *

* * * * * * *

⟦In the case of an alien seeking entry for a motion picture or television production, (i) any opinion under the previous sentence shall only be advisory, (ii) any such opinion that recommends denial must be in writing, (iii) in making the decision the Attorney General shall consider the exigencies and scheduling of the production, and (iv) the Attorney General shall append to the decision any such opinion. The Attorney General shall provide by regulation for the waiver of the consultation requirement under subparagraph (A) in the case of aliens who have been admitted as nonimmigrants under section 101(a)(15)(O)(i) because of extraordinary ability in the arts and who seek readmission to perform similar services within 2 years after the date of a consultation under such subparagraph.⟧ *In the case of an alien seeking entry for a motion picture or television production, (i) any opinion under the previous sentence shall only be advisory, (ii) any such opinion that recommends denial must be in writing, (iii) in making the decision the Secretary of Homeland Security shall consider the exigencies and scheduling of the production, (iv) the Secretary of Homeland Security shall append to the decision any such opinion, and (v) upon making the decision, the Secretary of Homeland Security shall immediately provide a copy of the decision to the consulting labor and management organizations. The Secretary of Homeland Security shall provide by*

regulation for the waiver of the consultation requirement under subparagraph (A) in the case of aliens who have been admitted as nonimmigrants under section 101(a)(15)(O)(i) because of extraordinary ability in the arts or extraordinary achievement in motion picture or television production and who seek readmission to perform similar services within 3 years after the date of a consultation under such subparagraph provided that, in the case of aliens admitted because of extraordinary achievement in motion picture or television production, such waiver shall apply only if the prior consultations by the appropriate union and management organization were favorable or raised no objection to the approval of the petition. Not later than 5 days after the date such a waiver is provided, the **[**Attorney General**]** *Secretary of Homeland Security* shall forward a copy of the petition and all supporting documentation to the national office of an appropriate labor organization.

* * * * * * *

(12)(A) In addition to any other fees authorized by law, the Secretary of Homeland Security shall impose a fraud prevention and detection fee on an employer filing a petition under paragraph (1)—

(i) * * *

* * * * * * *

The Secretary of Homeland Security shall also impose the fee described in the preceding sentence on an employer filing an attestation under section 212(t)(1) or employing an alien pursuant to subsection (e).

* * * * * * *

(15) The Secretary of Homeland Security may not approve any petition under paragraph (1) filed by an employer with respect to an alien seeking to obtain the status of a nonimmigrant under subclause (b) or (b1) of section 101(a)(15)(H)(i) and the Secretary of State may not approve a visa with respect to an alien seeking to obtain the status of a nonimmigrant under subparagraph (E)(iii) or (H)(i)(b1) of section 101(a)(15) unless—

(A) the employer—

(i) is an institution of higher education (as defined in section 101(a) of the Higher Education Act of 1965 (20 U.S.C. 1001(a))), or a governmental or nonprofit entity; or

(ii) maintains a place of business in the United States that is licensed in accordance with any applicable State or local business licensing requirements and is used exclusively for business purposes; and

(B) the employer—

(i) is a governmental entity;

(ii) has aggregate gross assets with a value of not less than $50,000—

(I) in the case of an employer that is a publicly held corporation, as determined using its most recent report filed with the Securities and Exchange Commission; or

(II) in the case of any other employer, as determined as of the date on which the petition is filed

under regulations promulgated by the Secretary of Homeland Security; or

(iii) provides appropriate documentation of business activity under regulations promulgated by the Secretary of Homeland Security.

(16) The Secretary of Homeland Security shall establish a precertification procedure for employers who file multiple petitions described in this subsection or section 204(a)(1)(F). Such precertification procedure shall enable an employer to avoid repeatedly submitting documentation that is common to multiple petitions and establish, through a single filing, criteria relating to the employer and the offered employment opportunity.

* * * * * * *

(e)(1) * * *

* * * * * * *

(7)(A) An employer of a Mexican or Canadian professional under this subsection—

(i)(I) except as provided in subclause (II), will offer to the alien during the period of authorized employment wages that are at least—

(aa) the actual wage level paid by the employer to all other individuals with similar experience and qualifications for the specific employment in question; or

(bb) the prevailing wage level for the occupational classification in the area of employment, whichever is greater, based on the best information available; or

(II) if 80 percent or more of the employer's workers in the same occupational classification as the alien and in the same area of employment as the alien are United States workers (as defined in section 212(n)(4)), will offer to the alien during the period of authorized employment wages that are at least the actual wage level paid by the employer to all other individuals with similar experience and qualifications for the specific employment in question (but, in the case of an employer with more than 25 employees, in no event shall such wages be lower than the mean of the lowest one-half of wages surveyed pursuant to section 212(p)(5)); and

(ii) will provide working conditions for such alien that will not adversely affect the working conditions of workers similarly employed.

(B) The Secretary of Labor shall have the same investigatory and enforcement powers to ensure compliance with this paragraph as are set forth in section 212(n)(2).

* * * * * * *

(g)(1) The total number of aliens who may be issued visas or otherwise provided nonimmigrant status during any fiscal year (beginning with fiscal year 1992)—

(A) under section 101(a)(15)(H)(i)(b), may not exceed—

(i) * * *

* * * * * * *

(vi) 195,000 in fiscal year 2003; **[**and**]**

[(vii) 65,000 in each succeeding fiscal year; or**]**

(vii) 65,000 in fiscal years 2004 through 2013; and

(viii) 155,000 in each succeeding fiscal year; or

* * * * * * *

(5) The numerical limitations contained in paragraph (1)(A) shall not apply to any nonimmigrant alien issued a visa or otherwise provided status under section 101(a)(15)(H)(i)(b) who—

(A) * * *

* * * * * * *

[(C) has earned a master's or higher degree from a United States institution of higher education (as defined in section 101(a) of the Higher Education Act of 1965 (20 U.S.C. 1001(a)), until the number of aliens who are exempted from such numerical limitation during such year exceeds 20,000.]

(C) meets the requirements of paragraph (6)(A) or (7)(A) of section 203(b), until the number of aliens who are exempted from such numerical limitation during such year exceeds 40,000.

* * * * * * *

(12) Notwithstanding any other provision of this Act, any alien admitted or provided status as a nonimmigrant in order to provide services in a specialty occupation described in paragraph (1) or (3) of subsection (i) (other than services described in subparagraph (H)(ii)(a), (O), or (P) of section 101(a)(15)) or as a fashion model shall have been issued a visa (or otherwise been provided nonimmigrant status) under subclause (b) or (b1) of section 101(a)(15)(H)(i) or section 101(a)(15)(E)(iii).

* * * * * * *

(i)(1) * * *

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(4)(A) For purposes of paragraphs (1)(B) and (3)(B), the term "bachelor's or higher degree" includes a foreign degree that is a recognized foreign equivalent of a bachelor's or higher degree.

(B)(i) In the case of an alien with a foreign degree, any determination with respect to the equivalence of that degree to a degree obtained in the United States shall be made by the Secretary of State.

(ii) In carrying out the preceding clause, the Secretary of State shall verify the authenticity of any foreign degree proffered by an alien. The Secretary of State may enter into contracts with public or private entities in conducting such verifications.

(iii) In addition to any other fees authorized by law, the Secretary of State may impose a fee on an employer filing a petition under subsection (c)(1) initially to grant an alien nonimmigrant status described in section 101(a)(15)(H)(i)(b), if a determination or verification described in clause (i) or (ii) is required with respect to the petition. Fees collected under this clause shall be deposited in the Treasury in accordance with section 286(t).

* * * * * * *

(l)(1) In the case of a request by an interested State agency, or by an interested Federal agency, for a waiver of the 2-year foreign residence requirement under section 212(e) on behalf of an alien described in clause (iii) of such section, the Attorney General shall not grant such waiver unless—

(A) * * *

* * * * * * *

(C) in the case of a request by an interested Federal agency or by an interested State agency—

[(i) the alien demonstrates a bona fide offer of full-time employment at a health facility or health care organization, which employment has been determined by the Attorney General to be in the public interest; and

[(ii) the alien agrees to begin employment with the health facility or health care organization within 90 days of receiving such waiver, and agrees to continue to work for a total of not less than 3 years (unless the Attorney General determines that extenuating circumstances exist, such as closure of the facility or hardship to the alien, which would justify a lesser period of employment at such health facility or health care organization, in which case the alien must demonstrate another bona fide offer of employment at a health facility or health care organization for the remainder of such 3-year period); and]

(i) the alien demonstrates a bona fide offer of full-time employment, at a health care organization, which employment has been determined by the Secretary of Homeland Security to be in the public interest; and

(ii) the alien agrees to begin employment with the health facility or health care organization in a geographic area or areas which are designated by the Secretary of Health and Human Services as having a shortage of health care professionals by the later of the date that is 90 days after receiving such waiver, 90 days after completing graduate medical education or training under a program approved pursuant to section 212(j)(1), or 90 days after receiving nonimmigrant status or employment authorization, and agrees to continue to work for a total of not less than 3 years in any status authorized for such employment under this subsection unless—

(I) the Secretary determines that extenuating circumstances exist that justify a lesser period of employment at such facility or organization, in which case the alien shall demonstrate another bona fide offer of employment at a health facility or health care organization, for the remainder of such 3-year period;

(II) the interested State agency that requested the waiver attests that extenuating circumstances exist that justify a lesser period of employment at such facility or organization in which case the alien shall demonstrate another bona fide offer of employment at a health facility or health care organization so designated by the Secretary of Health and Human Services, for the remainder of such 3-year period; or

(III) if the alien elects not to pursue a determination of extenuating circumstances pursuant to subclause (I) or (II), the alien terminates the alien's employment relationship with such facility or organization, in which case the alien shall be employed for the remainder of such 3-year period, and 1 additional year

for each determination, at another health facility or health care organization in a geographic area or areas which are designated by the Secretary of Health and Human Services as having a shortage of health care professionals; and

(D) in the case of a request by an interested Federal agency (other than a request by an interested Federal agency to employ the alien full-time in medical research or training) or by an interested State agency, the alien agrees to practice primary care or specialty medicine in accordance with paragraph (2) for a total of not less than 3 years only in the geographic area or areas which are designated by the Secretary of Health and Human Services as having a shortage of health care professionals, except that—

(i) * * *

(ii) in the case of a request by an interested State agency, the head of such State agency determines that the alien is to practice medicine under such agreement in a facility that serves patients who reside in one or more geographic areas so designated by the Secretary of Health and Human Services (without regard to whether such facility is located within such a designated geographic area), and the grant of such waiver would not cause the number of the waivers granted on behalf of aliens for such State for a fiscal year (within the limitation in subparagraph (B)) in accordance with the conditions of this clause to exceed 10; **[**and**]**

(iii) in the case of a request by an interested Federal agency or by an interested State agency for a waiver for an alien who agrees to practice specialty medicine in a facility located in a geographic area so designated by the Secretary of Health and Human Services, the request shall demonstrate, based on criteria established by such agency, that there is a shortage of health care professionals able to provide services in the appropriate medical specialty to the patients who will be served by the alien**[**.**]***; and*

(iv) in the case of a request by an interested State agency—

(I) the head of such agency determines that the alien is to practice medicine in, or be on the faculty of a residency program at, an academic medical center (as that term is defined in section 411.355(e)(2) of title 42, Code of Federal Regulations, or similar successor regulation), without regard to whether such facility is located within an area designated by the Secretary of Health and Human Services as having a shortage of health care professionals; and

(II) the head of such agency determines that—

(aa) the alien physician's work is in the public interest; and

(bb) the grant of such waiver would not cause the number of the waivers granted on behalf of aliens for such State for a fiscal year (within the limitation in subparagraph (B) and subject to

paragraph (4)) in accordance with the conditions of this clause to exceed 3.

(2)(A) Notwithstanding section 248(a)(2), the Attorney General may change the status of an alien who qualifies under this subsection and section 212(e) to that of [an alien described in section 101(a)(15)(H)(i)(b).] *any status authorized for employment under this Act.* The numerical limitations contained in subsection (g)(1)(A) shall not apply to any alien whose status is changed under the preceding sentence, if the alien obtained a waiver of the 2-year foreign residence requirement upon a request by an interested Federal agency or an interested State agency.

* * * * * * *

(4)(A)(i) A State shall be allotted a total of 35 waivers under paragraph (1)(B) for a fiscal year if 90 percent of the waivers available to the State were used in the previous fiscal year.

(ii) When an allotment has occurred under clause (i), the State shall be allotted an additional 5 waivers under paragraph (1)(B) for each subsequent fiscal year if 90 percent of the waivers available to the State were used in the previous fiscal year, except that if the State is allotted 60 or more waivers for a fiscal year, the State shall be eligible for the additional 5 waivers under this clause only if 90 percent of the waivers available to all States receiving at least 1 waiver under paragraph (1)(B) were used in the previous fiscal year.

(B) Any increase in allotments under subparagraph (A) shall be maintained indefinitely, unless in a fiscal year, the total number of such waivers granted is 5 percent lower than in the last year in which there was an increase in the number of waivers allotted pursuant to this paragraph, in which case—

(i) the number of waivers allotted shall be decreased by 5 for all States beginning in the next fiscal year; and

(ii) each additional 5 percent decrease in such waivers granted from the last year in which there was an increase in the allotment, shall result in an additional decrease of 5 waivers allotted for all States, provided that the number of waivers allotted for all States shall not drop below 30.

(5) An alien granted a waiver under paragraph (1)(C) shall enter into an employment agreement with the contracting health facility or health care organization that—

(A) specifies the maximum number of on-call hours per week (which may be a monthly average) that the alien will be expected to be available and the compensation the alien will receive for on-call time;

(B) specifies whether the contracting facility or organization will pay for the alien's malpractice insurance premiums, including whether the employer will provide malpractice insurance and, if so, the amount of such insurance that will be provided;

(C) describes all of the work locations that the alien will work and a statement that the contracting facility or organization will not add additional work locations without the approval of the Federal agency or State agency that requested the waiver; and

(D) does not include a non-compete provision.

(6) An alien granted a waiver under paragraph (1)(C) whose employment relationship with a health facility or health care orga-

nization terminates during the 3-year service period required by such paragraph—

(A) shall have a period of 120 days beginning on the date of such determination of employment to submit to the Secretary of Homeland Security applications or petitions to commence employment with another contracting health facility or health care organization in a geographic area or areas which are designated by the Secretary of Health and Human Services as having a shortage of health care professionals; and

(B) shall be considered to be maintaining lawful status in an authorized stay during the 120-day period referred to in subparagraph (A).

(m)(1) An alien may not be accorded status as a nonimmigrant under clause ⟦(i) or (iii)⟧ *(i), (ii), or (iv)* of section 101(a)(15)(F) in order to pursue a course of study—

(A) * * *

* * * * * * *

(n)(1) A nonimmigrant alien described in paragraph (2) who was previously issued a visa or otherwise provided nonimmigrant status under ⟦section 101(a)(15)(H)(i)(b)⟧ *subparagraphs (H)(i)(b) and (O)(i) of section 101(a)(15)* is authorized to accept new employment *under such sections* upon the filing by the prospective employer of a new petition on behalf of such nonimmigrant as provided under subsection (a). Employment authorization shall continue for such alien until the new petition is adjudicated. If the new petition is denied, such authorization shall cease.

* * * * * * *

(s)(1) An employer providing optional practical training to an alien who has been issued a visa or otherwise provided nonimmigrant status under subparagraph (F) or (M) of section 101(a)(15) after completion of the alien's course of study—

(A)(i) except as provided in clause (ii), shall offer to the alien during the period of optional practical training wages that are at least—

(I) the actual wage level paid by the employer to all other individuals with similar experience and qualifications for the specific employment in question; or

(II) the prevailing wage level for the occupational classification in the area of employment, whichever is greater, based on the best information available; or

(ii) if 80 percent or more of the employer's workers in the same occupational classification as the alien and in the same area of employment as the alien are United States workers (as defined in section 212(n)(4)), shall offer to the alien during the period of authorized employment wages that are at least the actual wage level paid by the employer to all other individuals with similar experience and qualifications for the specific employment in question (but, in the case of an employer with more than 25 employees, in no event shall such wages be lower than the mean of the lowest one-half of wages surveyed pursuant to section 212(p)(5)); and

(B) shall provide working conditions for such alien that will not adversely affect the working conditions of workers similarly employed.

(2) The Secretary of Labor has the same investigatory and enforcement powers to ensure compliance with paragraph (1) as are set forth in section 212(n)(2).

(t) A nonimmigrant issued a visa or otherwise provided nonimmigrant status under subparagraph (A), (E), (G), (H), (I), (J), (L), (O), (P), (Q), or (R) of section 101(a)(15), or section 214(e), and otherwise as the Secretary of Homeland Security may by regulations prescribe, whose status has expired but who has, or whose sponsoring employer or authorized agent has, filed a timely application or petition for an extension of authorized status as provided under this section, is authorized to continue employment with the same employer for a period not to exceed 240 days beginning on the date of the expiration of the authorized period of stay until and unless the application or petition is denied. Such authorization shall be subject to the same conditions and limitations noted on the original authorization.

* * * * * * *

CONDITIONAL PERMANENT RESIDENT STATUS FOR CERTAIN ALIEN [ENTREPRENEURS,] *INVESTORS,* SPOUSES, AND CHILDREN

SEC. 216A. (a) IN GENERAL.—

(1) CONDITIONAL BASIS FOR STATUS.—Notwithstanding any other provision of this Act, an alien [entrepreneur] *investor* (as defined in subsection (f)(1)), alien spouse, and alien child (as defined in subsection (f)(2)) shall be considered, at the time of obtaining the status of an alien lawfully admitted for permanent residence, to have obtained such status on a conditional basis subject to the provisions of this section.

(2) NOTICE OF REQUIREMENTS.—

(A) AT TIME OF OBTAINING PERMANENT RESIDENCE.—At the time an alien [entrepreneur] *investor*, alien spouse, or alien child obtains permanent resident status on a conditional basis under paragraph (1), the [Attorney General] *Secretary of Homeland Security* shall provide for notice to such an [entrepreneur] *investor*, spouse, or child respecting the provisions of this section and the requirements of subsection (c)(1) to have the conditional basis of such status removed.

(B) AT TIME OF REQUIRED PETITION.—In addition, the [Attorney General] *Secretary of Homeland Security* shall attempt to provide notice to such an [entrepreneur] *investor*, spouse, or child, at or about the beginning of the 90-day period described in subsection (d)(2)(A), of the requirements of subsection (c)(1).

(C) EFFECT OF FAILURE TO PROVIDE NOTICE.—The failure of the [Attorney General] *Secretary of Homeland Security* to provide a notice under this paragraph shall not affect the enforcement of the provisions of this section with respect to such an [entrepreneur] *investor*, spouse, or child.

(b) TERMINATION OF STATUS IF FINDING THAT QUALIFYING ENTREPRENEURSHIP IMPROPER.—

(1) IN GENERAL.—In the case of an alien [entrepreneur] *investor* with permanent resident status on a conditional basis

under subsection (a), if the [Attorney General] *Secretary of Homeland Security* determines, before the second anniversary of the alien's obtaining the status of lawful admission for permanent residence, that—

(A) * * *

* * * * * * *

then the [Attorney General] *Secretary of Homeland Security* shall so notify the alien involved and, subject to paragraph (2), shall terminate the permanent resident status of the alien (and the alien spouse and alien child) involved as of the date of the determination.

(2) HEARING IN REMOVAL PROCEEDING.—Any alien whose permanent resident status is terminated under paragraph (1) may request a review of such determination in a proceeding to remove the alien. In such proceeding, the burden of proof shall be on the [Attorney General] *Secretary of Homeland Security* to establish, by a preponderance of the evidence, that a condition described in paragraph (1) is met.

(c) REQUIREMENTS OF TIMELY PETITION AND INTERVIEW FOR REMOVAL OF CONDITION.—

(1) IN GENERAL.—In order for the conditional basis established under subsection (a) for an alien [entrepreneur] *investor*, alien spouse, or alien child to be removed—

(A) the alien [entrepreneur] *investor* must submit to the [Attorney General] *Secretary of Homeland Security*, during the period described in subsection (d)(2), a petition which requests the removal of such conditional basis and which states, under penalty of perjury, the facts and information described in subsection (d)(1), and

(B) in accordance with subsection (d)(3), the alien [entrepreneur] *investor* must appear for a personal interview before an officer or employee of the Service respecting the facts and information described in subsection (d)(1).

(2) TERMINATION OF PERMANENT RESIDENT STATUS FOR FAILURE TO FILE PETITION OR HAVE PERSONAL INTERVIEW.—

(A) IN GENERAL.—In the case of an alien with permanent resident status on a conditional basis under subsection (a), if—

(i) * * *

(ii) unless there is good cause shown, the alien [entrepreneur] *investor* fails to appear at the interview described in paragraph (1)(B) (if required under subsection (d)(3)),

the [Attorney General] *Secretary of Homeland Security* shall terminate the permanent resident status of the alien (and the alien's spouse and children if it was obtained on a conditional basis under this section or section 216) as of the second anniversary of the alien's lawful admission for permanent residence.

* * * * * * *

(3) DETERMINATION AFTER PETITION AND INTERVIEW.—

(A) IN GENERAL.—If—

(i) * * *

(ii) the alien [entrepreneur] *investor* appears at any interview described in paragraph (1)(B),

the [Attorney General] *Secretary of Homeland Security* shall make a determination, within 90 days of the date of [the such filing] *such filing* or interview (whichever is later), as to whether the facts and information described in subsection (d)(1) and alleged in the petition are true with respect to the qualifying commercial enterprise.

[(B) REMOVAL OF CONDITIONAL BASIS IF FAVORABLE DETERMINATION.—If the Attorney General determines that such facts and information are true, the Attorney General shall so notify the alien involved and shall remove the conditional basis of the alien's status effective as of the second anniversary of the alien's lawful admission for permanent residence.]

(B) REMOVAL OR EXTENSION OF CONDITIONAL BASIS.—

(i) IN GENERAL.—Except as provided under clause (ii), if the Secretary of Homeland Security determines that such facts and information are true, including demonstrating that the alien complied with section (d)(1)(B)(i), the Secretary shall so notify the alien involved and shall remove the conditional basis of the alien's status effective as of the second anniversary of the alien's lawful admission for permanent residence.

(ii) EXCEPTION.—If the petition demonstrates that the facts and information are true, including demonstrating that the alien is in compliance with section (d)(1)(B)(ii), then the Secretary of Homeland Security may in the Secretary's discretion extend the conditional status for an additional year at the end of which—

(I) the alien must file a petition within 30 days after the third anniversary of the alien's lawful admission for permanent residence demonstrating that the alien complied with section (d)(1)(B)(i) and the Secretary shall remove the conditional basis of the alien's status effective as of such third anniversary; or

(II) the conditional status shall terminate.

(C) TERMINATION IF ADVERSE DETERMINATION.—If the [Attorney General] *Secretary of Homeland Security* determines that such facts and information are not true, the [Attorney General] *Secretary of Homeland Security* shall so notify the alien involved and, subject to subparagraph (D), shall terminate the permanent resident status of an alien [entrepreneur] *investor*, alien spouse, or alien child as of the date of the determination.

(D) HEARING IN REMOVAL PROCEEDING.—Any alien whose permanent resident status is terminated under subparagraph (C) may request a review of such determination in a proceeding to remove the alien. In such proceeding, the burden of proof shall be on the [Attorney General] *Secretary of Homeland Security* to establish, by a preponderance of the evidence, that the facts and information described in subsection (d)(1) and alleged in the petition are

not true with respect to the qualifying commercial enterprise.

(d) DETAILS OF PETITION AND INTERVIEW.—

(1) CONTENTS OF PETITION.—Each petition under subsection (c)(1)(A) shall contain facts and information demonstrating that the alien—

(A)(i) * * *

(ii) sustained the actions described in clause (i) throughout the period of the alien's residence in the United States; **[**and**]**

(B)(i) created the employment required under section 203(b)(5)(A)(ii); or

(ii) is actively in the process of creating the employment required under section 203(b)(5)(A)(ii) and will create such employment before the third anniversary of the alien's lawful admission for permanent residence; and

[(B)**]** *(C)* is otherwise conforming to the requirements of section 203(b)(5).

(2) PERIOD FOR FILING PETITION.—

(A) * * *

(B) DATE PETITIONS FOR GOOD CAUSE.—Such a petition may be considered if filed after such date, but only if the alien establishes to the satisfaction of the **[**Attorney General**]** *Secretary of Homeland Security* good cause and extenuating circumstances for failure to file the petition during the period described in subparagraph (A).

(C) FILING OF PETITIONS DURING REMOVAL.—In the case of an alien who is the subject of removal hearings as a result of failure to file a petition on a timely basis in accordance with subparagraph (A), the **[**Attorney General**]** *Secretary of Homeland Security* may stay such removal proceedings against an alien pending the filing of the petition under subparagraph (B).

(3) PERSONAL INTERVIEW.—The interview under subsection (c)(1)(B) shall be conducted within 90 days after the date of submitting a petition under subsection (c)(1)(A) and at a local office of the Service, designated by the **[**Attorney General**]** *Secretary of Homeland Security*, which is convenient to the parties involved. The **[**Attorney General**]** *Secretary of Homeland Security*, in the Attorney General's discretion, may waive the deadline for such an interview or the requirement for such an interview in such cases as may be appropriate.

* * * * * * *

(f) DEFINITIONS.—In this section:

(1) The term "alien **[**entrepreneur**]** *investor*" means an alien who obtains the status of an alien lawfully admitted for permanent residence (whether on a conditional basis or otherwise) under section 203(b)(5).

(2) The term "alien spouse" and the term "alien child" mean an alien who obtains the status of an alien lawfully admitted for permanent residence (whether on a conditional basis or otherwise) by virtue of being the spouse or child, respectively, of an alien **[**entrepreneur**]** *investor*.

* * * * * * *

SEC. 216B. CONDITIONAL PERMANENT RESIDENT STATUS FOR CERTAIN ALIEN ENTREPRENEURS, SPOUSES, AND CHILDREN.

(a) IN GENERAL.—

(1) CONDITIONAL BASIS FOR STATUS.—Notwithstanding any other provision of this Act, an alien entrepreneur (as defined in subsection (f)(1) of this section), alien spouse, and alien child (as defined in subsection (f)(2) of this section) shall be considered, at the time of obtaining the status of an alien lawfully admitted for permanent residence, to have obtained such status on a conditional basis subject to the provisions of this section.

(2) NOTICE OF REQUIREMENTS.—

(A) AT TIME OF OBTAINING PERMANENT RESIDENCE.—At the time an alien entrepreneur, alien spouse, or alien child obtains permanent resident status on a conditional basis under paragraph (1), the Secretary of Homeland Security shall provide for notice to such an entrepreneur, spouse, or child respecting the provisions of this section and the requirements of subsection (c)(1) of this section to have the conditional basis of such status removed.

(B) AT TIME OF REQUIRED PETITION.—In addition, the Secretary of Homeland Security shall attempt to provide notice to such an entrepreneur, spouse, or child, at or about the beginning of the 90-day period described in subsection (d)(2)(A) of this section, of the requirements of subsection (c)(1) of this section.

(C) EFFECT OF FAILURE TO PROVIDE NOTICE.—The failure of the Secretary of Homeland Security to provide a notice under this paragraph shall not affect the enforcement of the provisions of this section with respect to such an entrepreneur, spouse, or child.

(b) TERMINATION OF STATUS IF FINDING THAT QUALIFYING ENTREPRENEURSHIP IMPROPER.—

(1) IN GENERAL.—In the case of an alien entrepreneur with permanent resident status on a conditional basis under subsection (a) of this section, if the Secretary of Homeland Security determines, before the third anniversary of the alien's obtaining the status of lawful admission for permanent residence, that—

(A) the required investment in the commercial enterprise under section 203(b)(8)(A)(i)(I) was intended solely as a means of evading the immigration laws of the United States;

(B)(i) any requisite capital to be invested under section 203(b)(8)(A)(i)(I) had not been invested, or was not actively in the process of being invested; or

(ii) the alien was not sustaining the actions described in clause (i) throughout the period of the alien's residence in the United States; or

(C) the alien was otherwise not conforming to the requirements of section 203(b)(8)(A)(i);

then the Secretary of Homeland Security shall so notify the alien involved and, subject to paragraph (2), shall terminate the permanent resident status of the alien (and the alien spouse and alien child) involved as of the date of the determination.

(2) HEARING IN REMOVAL PROCEEDING.—Any alien whose permanent resident status is terminated under paragraph (1)

may request a review of such determination in a proceeding to remove the alien. In such proceeding, the burden of proof shall be on the Secretary of Homeland Security to establish, by a preponderance of the evidence, that a condition described in paragraph (1) is met.

(c) REQUIREMENTS OF TIMELY PETITION AND INTERVIEW FOR REMOVAL OF CONDITION.—

(1) IN GENERAL.—In order for the conditional basis established under subsection (a) of this section for an alien entrepreneur, alien spouse, or alien child to be removed—

(A) the alien entrepreneur must submit to the Secretary of Homeland Security, during the period described in subsection (d)(2), a petition which requests the removal of such conditional basis and which states, under penalty of perjury, the facts and information described in subsection (d)(1); and

(B) in accordance with subsection (d)(3), the alien entrepreneur must appear for a personal interview before an officer or employee of the Department of Homeland Security respecting the facts and information described in subsection (d)(1).

(2) TERMINATION OF PERMANENT RESIDENT STATUS FOR FAILURE TO FILE PETITION OR HAVE PERSONAL INTERVIEW.—

(A) IN GENERAL.—In the case of an alien with permanent resident status on a conditional basis under subsection (a) of this section, if—

(i) no petition is filed with respect to the alien in accordance with the provisions of paragraph (1)(A); or

(ii) unless there is good cause shown, the alien entrepreneur fails to appear at the interview described in paragraph (1)(B) (if required under subsection (d)(3) of this section), the Secretary of Homeland Security shall terminate the permanent resident status of the alien (and the alien's spouse and children if it was obtained on a conditional basis under this section or section 216A) as of the third anniversary of the alien's lawful admission for permanent residence.

(B) HEARING IN REMOVAL PROCEEDING.—In any removal proceeding with respect to an alien whose permanent resident status is terminated under subparagraph (A), the burden of proof shall be on the alien to establish compliance with the conditions of subparagraphs (A) and (B) of paragraph (1).

(3) DETERMINATION AFTER PETITION AND INTERVIEW.—

(A) IN GENERAL.—If—

(i) a petition is filed in accordance with the provisions of paragraph (1)(A); and

(ii) the alien entrepreneur appears at any interview described in paragraph (1)(B);

the Secretary of Homeland Security shall make a determination, within 90 days of the date of such filing or interview (whichever is later), as to whether the facts and information described in subsection (d)(1) and alleged in the petition are true with respect to the qualifying commercial enterprise.

(B) REMOVAL OR EXTENSION OF CONDITIONAL BASIS.—

(i) IN GENERAL.—Except as provided in clause (ii), if the Secretary of Homeland Security determines that such facts and information are true, including demonstrating that the alien complied with subsection (d)(1)(B)(i), the Secretary shall so notify the alien involved and shall remove the conditional basis of the alien's status effective as of the third anniversary of the alien's lawful admission for permanent residence.

(ii) EXCEPTION.—If the petition demonstrates that the facts and information are true, including demonstrating that the alien is in compliance with section (d)(1)(B)(ii), then the Secretary of Homeland Security may, in the Secretary's discretion, extend the conditional status for an additional year at the end of which—

(I) the alien must file a petition within 30 days after the fourth anniversary of the alien's lawful admission for permanent residence demonstrating that the alien complied with subsection (d)(1)(B)(i) and the Secretary shall remove the conditional basis of the alien's status effective as of such fourth anniversary; or

(II) the conditional status shall terminate.

(C) DETERMINATION IF ADVERSE DETERMINATION.—If the Secretary of Homeland Security determines that such facts and information are not true, the Secretary shall so notify the alien involved and, subject to subparagraph (D), shall terminate the permanent resident status of an alien entrepreneur, alien spouse, or alien child as of the date of the determination.

(D) HEARING IN REMOVAL PROCEEDING.—Any alien whose permanent resident status is terminated under subparagraph (C) may request a review of such determination in a proceeding to remove the alien. In such proceeding, the burden of proof shall be on the Secretary of Homeland Security to establish, by a preponderance of the evidence, that the facts and information described in subsection (d)(1) of this section and alleged in the petition are not true with respect to the qualifying commercial enterprise.

(d) DETAILS OF PETITION AND INTERVIEW.—

(1) CONTENTS OF PETITION.—Each petition under subsection (c)(1)(A) shall contain facts and information demonstrating that—

(A)(i) any requisite capital to be invested under section 203(b)(8)(A)(i)(I) had been invested, or was actively in the process of being invested; and

(ii) the alien sustained the actions described in clause (i) throughout the period of the alien's residence in the United States;

(B)(i) the alien created the employment required under section 203(b)(8)(A)(i)(I)(bb)(AA); or

(ii) the alien is actively in the process of creating the employment required under section 203(b)(8)(A)(i)(I)(bb)(AA) and will create such employment

before the fourth anniversary of the alien's lawful admission for permanent residence; and

(C) the alien is otherwise conforming to the requirements of section 203(b)(8)(A)(i).

(2) PERIOD FOR FILING PETITION.—

(A) 90-DAY PERIOD BEFORE SECOND ANNIVERSARY.—Except as provided in subparagraph (B), the petition under subsection (c)(1)(A) of this section must be filed during the 90-day period before the third anniversary of the alien's lawful admission for permanent residence.

(B) DATE PETITIONS FOR GOOD CAUSE.—Such a petition may be considered if filed after such date, but only if the alien establishes to the satisfaction of the Secretary of Homeland Security good cause and extenuating circumstances for failure to file the petition during the period described in subparagraph (A).

(C) FILING OF PETITIONS DURING REMOVAL.—In the case of an alien who is the subject of removal hearings as a result of failure to file a petition on a timely basis in accordance with subparagraph (A), the Secretary of Homeland Security may stay such removal proceedings against an alien pending the filing of the petition under subparagraph (B).

(3) PERSONAL INTERVIEW.—The interview under subsection (c)(1)(B) shall be conducted within 90 days after the date of submitting a petition under subsection (c)(1)(A) and at a local office of the Department of Homeland Security, designated by the Secretary of Homeland Security, which is convenient to the parties involved. The Secretary, in the Secretary's discretion, may waive the deadline for such an interview or the requirement for such an interview in such cases as may be appropriate.

(e) TREATMENT OF PERIOD FOR PURPOSES OF NATURALIZATION.—For purposes of title III, in the case of an alien who is in the United States as a lawful permanent resident on a conditional basis under this section, the alien shall be considered to have been admitted as an alien lawfully admitted for permanent residence and to be in the United States as an alien lawfully admitted to the United States for permanent residence.

(f) DEFINITIONS.—In this section:

(1) The term "alien entrepreneur" means an alien who obtains the status of an alien lawfully admitted for permanent residence (whether on a conditional basis or otherwise) under section 203(b)(8)(A)(i)(I) of this title.

(2) The term "alien spouse" and the term "alien child" mean an alien who obtains the status of an alien lawfully admitted for permanent residence (whether on a conditional basis or otherwise) by virtue of being the spouse or child, respectively, of an alien entrepreneur.

(3) The term "commercial enterprise" includes a limited partnership.

* * * * * * *

CHAPTER 5—ADJUSTMENT AND CHANGE OF STATUS

ADJUSTMENT OF STATUS OF NONIMMIGRANT TO THAT OF PERSON ADMITTED FOR PERMANENT RESIDENCE

SEC. 245. (a) * * *

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(n) ADJUSTMENT OF STATUS FOR EMPLOYMENT-BASED IMMIGRANTS.—

(1) PETITION.—An alien who has status under subparagraph (H)(i)(b), (L), or (O)(i) of section 101(a)(15) or who has status under subparagraph (F) or (M) of such section and who has received optional practical training after completion of the alien's course of study, and any eligible dependents of such alien, who has filed a petition or on whose behalf a petition has been filed for immigrant status pursuant to subparagraph (E), (F), (G), or (H) of section 204(a)(1), may concurrently, or at any time thereafter, file an application with the Secretary of Homeland Security for adjustment of status if such petition has been approved, regardless of whether an immigrant visa is immediately available at the time the application is filed.

(2) AVAILABILITY.—An application filed pursuant to paragraph (1) may not be approved until the date on which an immigrant visa becomes available.

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CHAPTER 9—MISCELLANEOUS

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DISPOSITION OF MONEYS COLLECTED UNDER THE PROVISIONS OF THIS TITLE

SEC. 286. (a) * * *

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(w) H–1B EDUCATIONAL CREDENTIAL VERIFICATION ACCOUNT.—There is established in the general fund of the Treasury a separate account, which shall be known as the "H–1B Educational Credential Verification Account". Notwithstanding any other provision of law, there shall be deposited as offsetting receipts into the account all fees collected under section 214(i)(4)(B)(iii). Amounts deposited into the account shall remain available to the Secretary of State until expended to carry out section 214(i)(4)(B).

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SECTION 610 OF THE DEPARTMENTS OF COMMERCE, JUSTICE, AND STATE, THE JUDICIARY, AND RELATED AGENCIES APPROPRIATIONS ACT, 1993

SEC. 610. [PILOT] IMMIGRATION PROGRAM.—(a) * * *

(b) For purposes of the program established in subsection (a), beginning on October 1, 1992, but no later than October 1, 1993, the Secretary of State, together with the Secretary of Homeland Se-

curity, shall set aside 3,000 visas annually [until September 30, 2015] to include such aliens as are eligible for admission under section 203(b)(5) of the Immigration and Nationality Act and this section, as well as spouses or children which are eligible, under the terms of the Immigration and Nationality Act, to accompany or follow to join such aliens.

* * * * * * *

(e)(1) No person who—

(A) has been convicted of an aggravated felony (as defined in section 101(a)(43) of the Immigration and Nationality Act (8 U.S.C. 1101(a)(43)));

(B) would be inadmissible under section 212(a)(3) of such Act (8 U.S.C. 1182(a)(3)) if they were an alien seeking admission; or

(C) has been convicted of violating, or found to have violated, a fraud provision of the Federal securities laws (as such term is defined under section 3 of the Securities Exchange Act of 1934 (15 U.S.C. 78c)),

shall knowingly be permitted by any regional center to be involved with the regional center as its principal, representative, administrator, owner, officer, board member, manager, executive, general partner, fiduciary, member, or in other similar position of substantive authority for the operations, management, or promotion of the regional center.

(2) The Secretary of Homeland Security shall require such attestations and information (including biometric information), and shall perform such criminal record checks and other background checks with respect to a regional center, and persons involved in a regional center as described in paragraph (1), as the Secretary, in the Secretary's discretion, considers appropriate to determine whether the regional center is in compliance with paragraph (1).

(3) The Secretary may terminate any regional center from the program under this section if the Secretary determines that—

(A) the regional center is in violation of paragraph (1);

(B) the regional center has provided any false attestation or information under paragraph (2), or continues to allow any person who was involved with the regional center as described in paragraph (1) to continue to be involved with the regional center if the regional center knows that the person has provided any false attestation or information under paragraph (2); or

(C) the regional center fails to provide an attestation or information requested by the Secretary under paragraph (2), or continues to allow any person who was involved with the regional center as described in paragraph (1) to continue to be involved with the regional center if the regional center knows that the person has failed to provide an attestation or information requested by the Secretary under paragraph (2).

(4) For the purpose of this subsection, the term "regional center" shall, in addition to the regional center itself, include any commercial enterprise or job creating enterprise in which a regional center has invested.

(f)(1) The Secretary of Homeland Security shall not approve an application for regional center designation or regional center amendment that does not certify that the regional center and all parties to the regional center are in and will maintain compliance

with Federal securities laws (as such term is defined under section 3 of the Securities Exchange Act of 1934 (15 U.S.C. 78c)).

(2) The Secretary of Homeland Security shall immediately terminate the designation of any regional center that does not provide the certification described in paragraph (1) on an annual basis.

(3) In addition to any other authority provided to the Secretary of Homeland Security regarding the program described in this section, the Secretary may suspend or terminate the designation of any regional center if the Secretary determines that the regional center, or any party to the regional center:

(A) is permanently or temporarily enjoined by order, judgment, or decree of any court of competent jurisdiction in connection with the purchase or sale of a security;

(B) is subject to any order of the Securities and Exchange Commission that bars such person from association with an entity regulated by the Securities and Exchange Commission, or constitutes a final order based on violations in connection with the purchase or sale of a security;

(C) has been convicted of violating, or found to have violated, a fraud provision of the Federal securities laws (as such term is defined under section 3 of the Securities Exchange Act of 1934 (15 U.S.C. 78c)); or

(D) knowingly submitted or caused to be submitted a certification described in paragraphs (1) or (2) of this subsection that contained an untrue statement of material fact, or omitted to state a material fact necessary, in order to make the statements made, in light of the circumstances under which they were made, not misleading.

(4) Nothing in this subsection shall be construed to impair or limit the authority of the Securities and Exchange Commission under the Federal securities laws.

(5) For the purpose of this subsection, the term "party to the regional center" shall include, in addition to the regional center itself, its agents, servants, employees, attorneys, or any persons in active concert or participation with the regional center.

CHINESE STUDENT PROTECTION ACT OF 1992

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SEC. 2. ADJUSTMENT TO LAWFUL PERMANENT RESIDENT STATUS OF CERTAIN NATIONALS OF THE PEOPLE'S REPUBLIC OF CHINA.

(a) IN GENERAL.—Subject to subsection (c)(1), whenever an alien described in subsection (b) applies for adjustment of status under section 245 of the Immigration and Nationality Act during the application period (as defined in [subsection (e)] *subsection (d))* the following rules shall apply with respect to such adjustment:

(1) * * *

* * * * * * *

[(d) OFFSET IN PER COUNTRY NUMERICAL LEVEL.—

[(1) IN GENERAL.—The numerical level under section 202(a)(2) of the Immigration and Nationality Act applicable to natives of the People's Republic of China in each applicable fis-

cal year (as defined in paragraph (3)) shall be reduced by 1,000.

[(2) ALLOTMENT IF SECTION 202(e) APPLIES.—If section 202(e) of the Immigration and Nationality Act is applied to the People's Republic of China in an applicable fiscal year, in applying such section—

[(A) 300 immigrant visa numbers shall be deemed to have been previously issued to natives of that foreign state under section 203(b)(3)(A)(i) of such Act in that year, and

[(B) 700 immigrant visa numbers shall be deemed to have been previously issued to natives of that foreign state under section 203(b)(5) of such Act in that year.

[(3) APPLICABLE FISCAL YEAR.—

[(A) IN GENERAL.—In this subsection, the term "applicable fiscal year" means each fiscal year during the period—

[(i) beginning with the fiscal year in which the application period begins; and

[(ii) ending with the first fiscal year by the end of which the cumulative number of aliens counted for all fiscal years under subparagraph (B) equals or exceeds the total number of aliens whose status has been adjusted under section 245 of the Immigration and Nationality Act pursuant to subsection (a).

[(B) NUMBER COUNTED EACH YEAR.—The number counted under this subparagraph for a fiscal year (beginning during or after the application period) is 1,000, plus the number (if any) by which (i) the immigration level under section 202(a)(2) of the Immigration and Nationality Act for the People's Republic of China in the fiscal year (as reduced under this subsection), exceeds (ii) the number of aliens who were chargeable to such level in the year.]

[(e)] *(d)* APPLICATION PERIOD DEFINED.—In this section, the term "application period" means the 12-month period beginning July 1, 1993.

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IMMIGRATION AND NATIONALITY TECHNICAL CORRECTIONS ACT OF 1994

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TITLE II—TECHNICAL CORRECTIONS OF IMMIGRATION LAWS

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SEC. 220. WAIVER OF FOREIGN COUNTRY RESIDENCE REQUIREMENT WITH RESPECT TO INTERNATIONAL MEDICAL GRADUATES.

(a) * * *

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(c) EFFECTIVE DATE.—The amendments made by this section shall apply to aliens admitted to the United States under section 101(a)(15)(J) of the Immigration and Nationality Act, or acquiring such status after admission to the United States, before, on, or after the date of enactment of this Act [and before September 30, 2015].

* * * * * * *

Dissenting Views

Our Nation's high-skilled employment-based immigration system, like the overall U.S. immigration system, faces many serious problems. Chief among them is the fact that American businesses are forced to wait for years—and even decades—to obtain permanent residency for critical high-skilled workers. Experts estimate that some 400,000 to 500,000 workers on H–1B or other temporary visas are currently waiting in the employment-based green card backlogs for skilled workers and professionals (i.e., the "third preference" backlog). Some of those workers—nationals from India, for example—currently face a 70-year wait to convert an H–1B visa into a green card.

Companies routinely hire critical foreign workers through the H–1B temporary visa program, but those companies then struggle to keep those workers due to the insufficient number of green cards available every year. Many companies complain of losing critical workers who grew frustrated with the limitations of a temporary visa and simply decided to return home or to another country with more generous immigration programs. And as word of these problems spreads, U.S. companies are finding it harder and harder to attract talented workers in the first place.

Ostensibly to deal with this problem, H.R. 2131 more than doubles the number of H–1B temporary visas available to such workers and modestly increases the number of available green cards. In the short term, the small increase in green cards will ensure that some people who have been waiting for years will finally receive permanent residence. But in the long term, the enormous increase in temporary visas without a comparable increase in green card numbers will merely ensure the growth of an even larger and longer backlog in the future. Indian nationals with bachelor's degrees now face a 70-year backlog, but they may be facing a 150-year backlog in just a few years if the SKILLS Act is enacted into law.

At the same time, H.R. 2131 would do considerable damage to our family- and diversity-based immigration systems. It would eliminate a longstanding program that ensures diversity in our immigration system and is a primary source of immigration for persons from African nations. And the bill would also eliminate the sibling visa category that helps reunify immediate family members and serves as an important tool for strengthening immigrant communities and businesses. Instead of providing what this Nation desperately needs—namely, a comprehensive solution that fixes our entire broken immigration system—H.R. 2131 is a flawed piecemeal approach that ensures the continued dysfunction of that system. The bill is thus opposed by immigration advocacy and religious organizations of all stripes, including the U.S. Conference of

Catholic Bishops, the Episcopal Church, the Lutheran Immigration and Refugee Service, and the Union for Reform Judaism.[1]

For these reasons, and those described below, we respectfully dissent and urge our colleagues to reject this dangerous and seriously flawed bill.

DESCRIPTION AND BACKGROUND

SUMMARY OF H.R. 2131

H.R. 2131, the "Supplying Knowledge-based Immigrants and Lifting Levels of STEM Visas Act" or "SKILLS Visa Act," was introduced by Representative Darrell Issa (R-CA) on May 23, 2013. It has no Democratic co-sponsors. The Committee has not held a legislative hearing on the bill, but on March 5, 2013, the Committee's Subcommittee on Immigration and Border Security held a general hearing on high skilled immigration issues, entitled "Enhancing American Competitiveness through Skilled Immigration."

H.R. 2131 attempts to improve America's employment-based immigration system by creating and altering various employment-based immigrant (green card) and nonimmigrant (temporary) visa categories. The bill would alter permanent employment-based immigration by creating several new green card categories, including one for graduates with doctoral degrees in science, technology, engineering, or mathematics (STEM) from U.S. research universities; one for graduates with masters' degrees in STEM from U.S. research universities; and one for immigrant entrepreneurs who receive significant venture-capital funding or can demonstrate a history of job creation for American workers. The bill would also increase the number of green cards available every year for immigrants in existing employment-based green card categories, while reforming provisions related to immigrant investors and foreign physicians.

The bill, however, would offset these increases in employment-based green cards by eliminating other, unrelated green card categories. Specifically, the bill would eliminate (1) the diversity visa program that currently provides 50,000 green cards every year to immigrants from countries with low levels of immigration to the U.S. and (2) the "sibling" category that provides 65,000 green cards every year to the brothers and sisters of U.S. citizens. As amended at the markup, the bill would allow siblings who have approved petitions and are now waiting in the green card backlogs to receive green cards if their priority dates become current in the 10 years following enactment of the bill. Persons with later priority dates would essentially have their petitions rendered null and void. Because 65,000 visas are issued every year to persons in the sibling backlog, the 10-year window created by the bill would effectively provide visas to 650,000 of the approximate 2.5 million siblings currently waiting in green card backlogs.

H.R. 2131 also amends several categories of *temporary* visas for workers in "specialty occupations" or with "specialized knowledge" who are needed by employers in the United States. With respect to the H–1B category for workers in specialty occupations, the bill increases the number of temporary H–1B visas available every

[1] Letter from Faith-Based Organizations, to Hon. Robert Goodlatte, Chairman, and Hon. John Conyers, Jr. (June 26, 2013) (on file with the H. Comm. on the Judiciary, Democratic Staff).

year, increases the Department of Labor's authority to conduct investigations of employers, and provides work authorization to the spouses of H–1B holders. The bill applies the H–1B prevailing wage requirements to other visa categories—temporary TN visas for Mexican and Canadian workers in specialty occupations, temporary F visas for students engaged in employment through "optional practical training," and temporary L–1B visas for intra-company transferees with specialized knowledge who will work in the U.S. for more than 6 months over a 2-year period. The bill also provides additional portability to workers with temporary O visas, and it provides so-called "dual intent" for students on F visas who are coming to the United States to seek higher education in STEM fields.

Finally, H.R. 2131 reforms the prevailing wage system that now applies to employers seeking to obtain permanent green cards or certain temporary visas (*i.e.,* F, H–1B, H–1B1, L–1B, and TN visas). The bill would replace the current 4-level prevailing wage system with a new 3-level system that effectively raises prevailing wages that must be paid to workers in each of the above visa categories, commensurate with skills and experience. In the case of an employer who seeks to employ an immigrant in an occupation for which the vast majority of the employer's current employees are U.S. workers, the employer may instead pay the immigrant the same as the employer pays its U.S. workers with the same skills and experience.

SECTION-BY-SECTION ANALYSIS

Sec. 1. Short Title. Section 1 sets forth the short title of the bill as the "Supplying Knowledge-based Immigrants and Lifting Levels of STEM Visas Act" or the "SKILLS Visa Act."

TITLE I—IMMIGRANT VISA REFORMS

Sec. 101. Immigrant Visas for Certain Stem Graduates. Subsection (a) effectively increases the worldwide level of employment-based (EB) green cards by 50,000. The current EB green card cap of 140,000 is increased by 55,000 to a total of 195,000 green cards, but 5,000 of those extra green cards are then subtracted and made available to applicants under the Nicaraguan Adjustment and Central American Relief Act (NACARA).

Subsection (b) creates two new EB preference categories that allocate the 50,000 new green cards described in subsection (a) to foreign students with advanced degrees in STEM fields from U.S. universities with high levels of research activity. The subsection creates a new "sixth preference" (EB–6) category that allocates 50,000 visas to graduates with PhD or other doctoral degrees in STEM fields. And the subsection creates a new "seventh preference" (EB–7) category that allocates unused visas from the new EB–6 category to graduates with master's degrees in STEM fields, so long as those graduates also hold bachelor's degrees in STEM fields.

STEM is defined to include science, technology, engineering, and mathematics degrees, as well as medical, osteopathy, dental, veterinary, nursing, geography and cartography degrees. To be eligible for a STEM green card under EB–6 or EB–7:

- the student must have taken at least 85% of course work related to the degree while physically in the United States;
- the relevant institution of higher education must: (1) be at least 10 years old; (2) be accredited by an appropriate accrediting body; (3) be eligible for Federal student financial aid programs; and (4) be classified on the date of enactment by the Carnegie Foundation as a doctorate-granting university with a very high or high level of research activity (or be classified after the date of enactment by the National Science Foundation as having equivalent research activity to such schools); and
- the employer must have obtained a labor certification from the Department of Labor (which shows that there are not sufficient U.S. workers able, willing, qualified, and available for the job), except the Secretary of Homeland Security can waive this requirement when the Secretary deems it to be in the national interest.

Subsections (c) and (d) ensure that unused visas from the new EB–6 and EB–7 categories are made available to persons applying for visas under the existing EB–2 and EB–3 preference categories.

Subsection (e) conforms the Immigration and Nationality Act (INA) to provide a procedure for the adjustment of status for EB–6 and EB–7 applicants.

Subsection (f) amends the labor certification requirements in the INA to codify the existing requirement that employers file job orders with state workforce agencies as part of the labor certification process. The subsection also:

- requires state workforce agencies to post job orders on their agency websites;
- provides "special handling" for employers hiring EB–6 applicants (doctoral STEM graduates), which allows employers to prove that there are no *equally qualified* U.S. workers (rather than the normal procedure of having to prove that there are no *minimally qualified* U.S. workers); and
- provides expedited processing for both EB–6 and EB–7 petitions.

Subsection (g) requires a Government Accountability Office (GAO) study with respect to the certification of research universities by the National Science Foundation.

Subsection (h) requires DHS to publish information about employers who file EB–6 and EB–7 petitions.

Subsection (i) makes the above changes effective on October 1, 2014.

Sec. 102. Immigrant Visas for Entrepreneurs. Subsection (a) creates a new employment-based "eighth preference" (EB–8) category with 10,000 conditional green cards for entrepreneurs who start businesses and create jobs in the United States. Clause (i) authorizes green cards for entrepreneurs who receive at least $500,000 in venture capital from a qualified venture capital company or qualified angel investors, if such entrepreneurs will create full-time employment for at least five U.S. workers and will either: (1) raise an

additional $1 million in venture capital financing or (2) generate not less than $1 million in revenue. Clause (ii) authorizes green cards for E–2 treaty investors who have maintained E–2 status for at least 10 years and have created full-time employment for at least five U.S. workers for a minimum of 10 years. *(The E–2 program allows aliens to come to the U.S. on a temporary, but indefinitely renewable, basis pursuant to a treaty of commerce and navigation to open and run businesses in which they have invested a substantial amount of capital.)*

Subsection (b) conforms the INA to provide a procedure to provide conditional green cards to EB–8 applicants.

Subsection (c) amends the INA to provide procedures for removing the conditions on the permanent resident status of EB–8 applicants.

Subsection (d) makes the above changes effective on October 1, 2013.

Sec. 103. Additional Employment-based Immigrant Visas. Subsection (a) increases the worldwide level of employment-based (EB) green cards by another 40,000, further increasing the cap from 195,000 to 230,000 effective green cards (235,000 minus 5,000 green cards allocated to NACARA applicants). Of these 230,000 visas:

- subsection (b) allocates 40,040 (the same as current law) to the first preference category (EB–1) for: aliens with extraordinary ability; outstanding professors and researchers; and multinational executives and managers;
- subsection (c) allocates 55,040 (an increase of 15,000 over current law) to the second preference category (EB–2) for aliens of exceptional ability and aliens with advanced degrees in certain professions;
- subsection (d) allocates 55,040 (an increase of 15,000 over current law) to the third preference category (EB–3) for skilled workers and aliens with bachelor's degrees in certain professions;
- subsection (e) allocates 9,940 (the same as current law) to the fourth preference category (EB–4) for certain special immigrants; and
- subsection (f) allocates 9,940 (the same as current law) to the fifth preference category (EB–5) for immigrant investors.

Subsection (g) makes the above changes effective on October 1, 2013.

Sec. 104. Employment Creation Immigration Visas. This section makes changes to the EB–5 immigrant investor program and the EB–5 regional center program. The EB–5 program currently makes 9,940 green cards available each year to aliens who: (1) invest at least $1,000,000 in a new business (or at least $500,000 if the business is located in a rural area or an area of high unemployment); and (2) create at least ten full-time jobs for U.S. workers. Approved investors receive "conditional" green cards, and they can remove those conditions if they fulfill their investment and job creation requirements within 2 years. The EB–5 regional center program sets aside 3,000 EB–5 visas each year for aliens to pool investments in "designated regional centers" that fund larger projects to further

promote economic growth and job creation. Rather than run their own businesses, regional center investors invest in a new or pre-existing large-scale project along with other investors. Necessary job creation requirements are established through reasonable methodologies estimating job creation based on the economic activity created by the project.

Subsection (a) makes several changes to the EB–5 immigrant investor program, including:

- defining "capital" as not including assets acquired through unlawful means;
- increasing the amount of capital that is required to be invested under the program by the percentage that the Consumer Price Index has increased since 1990;
- tying future increases in the capital requirement to inflation, as measured by the Consumer Price Index;
- allowing investors an additional year (for a total of 3 years) to meet the job creation requirements in the EB–5 program; and
- redefining the term "targeted employment area" to prevent gerrymandering of areas for regional center designation by providing that: (1) the relevant targeted employment area must fit entirely within a geographical unit that the Labor Department has determined has an unemployment rate of at least 150 percent of the national rate; (2) the Secretary of Labor set forth a uniform methodology for determining whether an area qualifies as having unemployment of at least 150 percent of the national rate; and (3) DHS is not bound by the decision of any other entity that a particular area has experienced high unemployment.

Subsection (b) makes changes to the EB–5 regional center program, including:

- permanently reauthorizing the EB–5 regional center program;
- barring persons with certain criminal convictions, or who have been found to have violated the Federal securities laws, from holding a position of substantive authority in a regional center; and
- requiring background checks of persons holding positions of substantive authority in regional centers.

Subsection (c) makes the above changes effective upon enactment, except that they will apply only to future petitions filed by immigrant investors.

Sec. 105. Family-Sponsored Immigrant Visas. Subsection (a) increases the worldwide level of family-based green cards by 25,000 per year for the first 10 years after enactment, but then reduces it by 65,000 per year after the first 10 years, for a total net reduction in family-based green cards of 40,000 per year in perpetuity. For the period beginning 10 years after enactment, the subsection specifically reduces both the overall cap of FB green cards from 480,000 to 440,000 and the specific cap on preference category green cards from 226,000 to 186,000.

Subsection (b) allocates an additional 25,000 green cards to the family-based "second-preference A" category (F–2A), thus increasing the current cap of 87,934 to 112,934 green cards for the spouses and minor children of lawful permanent residents.

Subsections (c) and (d) eliminate the family-based fourth-preference category ("sibling category") for the brothers and sisters of U.S. citizens. U.S. citizens would no longer be able to file petitions for their siblings beginning on October 1, 2013, but 65,000 green cards per year would continue to be available for the 10 years after enactment to siblings with approved immigrant petitions. This provision would effectively make another 650,000 sibling green cards available for the next 10 years, which would help a relatively small portion of the 2.5 million siblings with approved immigrant petitions.

Sec. 106. Elimination of Diversity Immigration Program. This section eliminates the diversity visa program, which makes 50,000 green cards available each year to nationals from countries with low levels of immigration to the United States.

Sec. 107. Numerical Limitation To Any Single Foreign State. Subsection (a) eliminates the "per country" limits for employment-based green cards and raises the limit from 7% to 15% for family-based green cards.

Subsection (b) makes conforming amendments to the INA.

Subsection (c) eliminates a country-specific offset that reduces by 1,000 the available number of green cards available to nationals from China.

Subsection (d) makes the above changes effective on October 1, 2013.

Sec. 108. Physicians. This section modifies laws related to the "Conrad State 30" Program. Currently, foreign medical graduates can come to the United States to enter residency programs under J foreign exchange visas, after which they must return home for 2 years before being able to continue working in the United States. Under the Conrad State 30 Program, such medical graduates can receive waivers of the 2-year foreign residency requirement if they promise to serve for 3 years in health-care shortage areas as designated by the Secretary of HHS. Each state can receive up to 30 waivers a year requested by state agencies.

Subsection (a) permanently authorizes the Conrad State 30 J Waiver Program.

Subsection (b) allocates each state additional "J waivers" if 90% of available waivers are used in a year. The subsection also allocates an additional three waivers per state that can be used only at academic medical centers.

Subsection (c) adds a number of employment protections for physicians, including by:

- improving the ability of physicians to change employers by allowing them to either: (1) meet the "extenuating circumstances" requirement through the attestation of a state agency; or (2) change employers without such a determination if they agree to perform an additional year of service in underserved areas;
- requiring employment contracts to specify: (1) the number of on-call hours physicians must work and the compensation

they will receive for on-call time; (2) whether the employer will provide malpractice insurance; and (3) the specific facilities at which the physicians will work;

- prohibiting such contracts from including non-compete provisions;
- giving physicians whose employment is terminated 120 days to begin new employment in underserved areas before being considered out of status; and
- permitting physicians to perform their J waiver service in any authorized status, rather than just under the H–1B visa program as under current law.

Subsection (d) makes other changes related to physician immigration, including:

- providing "dual intent" to physicians seeking graduate medical training, which means such physicians will no longer need to prove that they lack the intent to immigrate permanently to the United States;
- providing additional flexibility for physicians who work at least 5 years in medically-underserved areas and want to self-petition for green cards under the current "national interest" waiver;
- clarifying that foreign medical degrees qualify as advanced degrees for purposes of immigration through the employment-based second preference category (EB–2) for aliens with advanced degrees in certain professions;
- extending visa status for physicians completing their residencies; and
- clarifying that spouses and children of physicians on J visas are not subject to the 2-year home country return requirement.

Subsection (e) provides various effective dates for this section.

Sec. 109. Permanent Priority Dates. Subsection (a) codifies the current practice that the "priority date" (for determining the alien's place in an employment-based green card line) for an employer's green card petition is the date that the employer files the labor certification application on behalf of the alien. The subsection also ensures that an alien who switches from one employment-based green card category to another retains his or her original priority date.

Subsection (b) makes the above changes effective on October 1, 2013.

TITLE II—NONIMMIGRANT VISA REFORMS

Sec. 201. H–1B Visas. This section amends the H–1B visa program for workers coming temporarily to perform services in a "specialty occupation." Such an occupation is one that requires: (1) theoretical and practical application of a body of highly specialized knowledge; and (2) attainment of a bachelor's or higher degree in the specific specialty (or its equivalent) as a minimum for entry into the occupation in the United States. Currently, the H–1B visa cap is 65,000 a year (although it has been as high as 195,000 in the past). The cap does not apply to H–1B petitions filed by institu-

tions of higher education (or related or affiliated nonprofit entities), nonprofit research organizations, or governmental research organization. In addition, the cap does not apply to the first 20,000 H–1B visas granted to aliens who have earned advanced degrees from U.S. institutions of higher education.

Subsection (a) increases the current 85,000 H–1B visa cap to 195,000 (an increase of 110,000 visas), by: (1) increasing the base H–1B cap from 65,000 to 155,000 (an increase of 90,000 visas); and (2) increasing the master's cap from 20,000 to 40,000 (an increase of 20,000 visas). The subsection also limits the 40,000 master's cap to graduates in STEM fields.

Subsection (b) provides work authorization to the spouses of H–1B workers.

Subsection (c) provides a number of anti-fraud measures in the H–1B program, including:

- requiring the Secretary of State to authenticate foreign degrees;
- allowing the Secretary of Labor to conduct audits and investigations without first having to make a determination concerning misconduct or a misrepresentation;
- requiring employers to prove that they are bona fide businesses in the United States; and
- providing subpoena authority to the Secretary of Labor.

Subsection (d) eliminates a practice known as "B visas in lieu of H–B visas" by requiring that any alien coming to work in a specialty occupation must have an H–1B visa.

Subsection (e) provides various effective dates for this section.

Sec. 202. L VISAS. This section amends the L visa program, which makes temporary visas available to "intracompany transferees," *i.e.,* employees who have been with a multinational company for at least 1 year and who seek to transfer from a foreign work site to a U.S. work site. L–1A visas are available to managers and executives, and L–1B visas are available to lower-level employees with "specialized knowledge." "Specialized knowledge" is defined as the special knowledge of a company product and its application in international markets or an advanced level of knowledge of company processes and procedures. There is no numerical cap or prevailing wage requirements associated with the L visa program.

Subsection (a) requires employers who are petitioning to bring in workers with "specialized knowledge" on L–1B visas to meet prevailing wage requirements if such workers will be in the United States for more than 6 months over a 2-year period. In complying with the prevailing wage requirement, an employer may take into account the value of wages paid by the employer to the alien in the currency of the alien's home country, the value of benefits provided in the home country, employer-provided housing or housing allowances, employer-provided vehicles or transportation allowances, and other benefits provided to the alien as an incident of the assignment in the United States. The subsection also provides the Labor Department with the same investigatory and enforcement powers to ensure compliance as it has in the H–1B program.

Subsection (b) makes this section effective on the date of enactment.

Sec. 203. O Visas. This section amends the O visa program, which makes temporary visas available to aliens with extraordinary ability in the sciences, arts, education, business, athletics or in motion picture and television (or who seek to accompany and assist in the artistic or athletic performance of such aliens) and have critical skills needed for the performance. An O visa petition must be filed with a written advisory opinion (a "consultation") issued by a union or peer group with expertise in the alien's area of specialty. Currently, a petition for an alien with extraordinary ability in the "live arts" may be filed without a consultation, if the alien had previously received an O visa, has received a consultation within the last 2 years, and seeks to perform similar services.

Subsection (a) makes the O visa more portable by allowing O visa holders to begin working for a new employer upon the employer's filing of a non-frivolous petition.

Subsection (b) extends the consultation waiver authority for the live arts to aliens with extraordinary ability in motion pictures or television. The subsection also extends the validity period for a prior consultation from two to 3 years.

Sec. 204. Mexican and Canadian Professionals. This section applies the H–1B program's prevailing wage requirements to the similar "TN" visas for Mexican and Canadian professionals under the North American Free Trade Agreement.

Sec. 205. Students. Subsection (a) provides "dual intent" to students on F visas who are enrolled in a full course of study in a STEM field at a U.S. institution of higher education, which means such students will no longer need to prove that they lack the intent to immigrate permanently to the United States.

Subsection (b) applies the H–1B program's prevailing wage requirements to students on F visas who are working for a U.S. employer under the F visa's "optional practical training" component that allows foreign students to seek employment in their fields in the U.S. for a period of time after obtaining their degrees.

Subsection (c) provides various effective dates for this section.

Sec. 206. Extension of Employment Eligibility While Visa Extension Pending. Subsection (a) codifies the practice of extending work authorization by 240 days for a temporary worker when the worker's employer files a timely petition for extension of the worker's status. The subsection makes this practice available for many nonimmigrant statuses, and it authorizes the Secretary of Homeland Security to add additional visa categories.

Subsection (b) makes this section effective on the date of enactment.

Sec. 207. Fraud Detection and Prevention Fee. This section expands the H–1B fraud detection and prevention fee to other H–1B-like categories, including the TN and E–3 visa categories.

Sec. 207. Technical Correction. This section makes a technical correction to the INA.

TITLE III—REFORMS AFFECTING BOTH IMMIGRANT AND NONIMMIGRANT VISAS

Sec. 301. Prevailing Wages. Subsection (a) reforms the current prevailing wage system by eliminating the current four-level wage system and replacing it with a new three-level wage system that effectively raises the wages that employers must pay immigrant

and nonimmigrant workers. The three new levels are calculated by the Department of Labor for each occupational classification in each metropolitan statistical area as follows:

- Level 1 is the mean of the lowest 2/3 of wages surveyed.
- Level 2 is the mean of all wages surveyed.
- Level 3 is the mean of the highest 2/3 of wages surveyed.

The new wage provisions are made applicable to employers using the permanent labor certification process, as well as employers seeking to hire temporary workers on H–1B, H–1B1, L–1B, and TN status or on F visa status through optional practical training. However, in the case of an employer who seeks to employ an immigrant in an occupation for which the vast majority of the employer's current employees are U.S. workers, the employer may instead pay the immigrant the same as the employer pays its U.S. workers with the same skills and experience. Employers using this alternate system, however, may not pay a prevailing wage that falls below the mean of the lowest half of wages surveyed in that occupation by the Department of Labor.

Subsection (b) makes the above changes effective on the date of enactment.

Sec. 302. Streamlining Petitions for Established Employers. Subsection (a) provides for a pre-certification procedure for established employers who file multiple immigration petitions every year.

Subsection (b) makes the above change effective on the date of enactment.

CONCERNS WITH H.R. 2131

I. H.R. 2131 FOLLOWS A ZERO-SUM APPROACH THAT DOOMS BROADER IMMIGRATION REFORM EFFORTS

Everyone agrees that our immigration system is fundamentally broken. One of the greatest symptoms of that broken system is the presence of an estimated 11 million undocumented immigrants in the United States. Equally important and related symptoms are the decades-long backlogs that currently plague our legal employment- and family-based permanent immigration systems. Both of these symptoms are primarily caused by an insufficient number of available green cards to meet the economic and family-reunification needs of American businesses, citizens, and permanent residents.

The answer to the above problem is simple: increase the annual allotment of green cards to make legal immigration a viable option for people seeking to fill needs in the American economy or reunify with family members in the United States. But the Majority has long rejected such a solution. Instead, it has insisted that increases in green cards in one category be offset with the elimination or reduction of green cards in other categories. Historically, the Majority has sought to increase green cards available to American businesses by eliminating green cards made available to diversity immigrants or the families of U.S. citizens.

When the House considered Representative Lamar Smith's "STEM Jobs Act" in the 112th Congress,[2] the Majority sought to

[2] H.R. 5429, 112th Cong. (2012).

increase green cards for advanced degree graduates in STEM fields by eliminating the diversity visa category with a commensurate number of green cards. The Majority claimed it was just "reallocating" immigrant visas, but there is simply no rule that requires Congress to offset increases in immigrant visas. There is no set number of immigrant visas such that Congress must tie an increase in employment-based visas to a decrease in diversity visas or any other immigrant visa category.

Indeed, the concept that new green cards must be offset by reducing immigration is a newly created fiction. In fact, Congress has often responded to our Nation's immigration needs by creating or increasing visas without eliminating or reducing other types of visas. For instance, when the 110th Congress created 25,000 green cards for Iraqi nationals who worked with the U.S. military, the Congress did not seek to eliminate 25,000 visas from other categories. Neither did recent Congresses offset visas when they created new immigrant visas for Afghan translators or when refugee admissions have increased. Since the current Majority has been in control of the House of Representatives, however, they have been unwilling to support clean bills to create STEM visas or otherwise address employment-based immigration issues. They have only been willing to increase immigration avenues for such immigrants by eliminating such avenues for others.

Like the STEM Jobs Act, H.R. 2131 would offset increases in green cards for certain employment-based immigrants by eliminating the diversity visa program that now provides 50,000 green cards annually to immigrants from countries with low levels of immigration to the United States. The bill would additionally eliminate the sibling category that provides 65,000 green cards per year to the brothers and sisters of U.S. citizens. This zero-sum approach to immigration means that we can only address one area of our broken immigration system by doing further harm to other areas of that system. This, in turn, would relegate the system to eternal dysfunction.

The U.S. immigration system cannot be fixed without addressing the incredibly long green card backlogs for employment- and family-based immigrants that have been plaguing the U.S. for decades. There are currently an estimated 4.4 million approved immigrant visa petitions pending at the National Visa Center, 111,000 of which involve employment-based petitions that are stuck in the green card backlogs.[3] It is worth noting that according to the Department of State, the figures "do not include the significant number of applications" for persons in the United States whose applications are held by U.S. Citizenship and Immigration Services.[4] Due to these backlogs, U.S. employers are often forced to wait for years—or decades for workers from India and China—before they can get green cards for needed workers. Lawful permanent residents are forced to wait for two to 5 years before they can reunite with their spouses and minor children. And U.S. citizens are forced to wait decades before they can reunite with their adult children

[3] Dept. of State, *Annual Report of Immigrant Visa Applicants in the Family-sponsored and Employment-based preferences Registered at the National Visa Center as of November 1, 2014* at http://travel.state.gov/content/dam/visas/Statistics/Immigrant-Statistics/WaitingListItem.pdf (last accessed Dec. 10, 2014).

[4] *Id.*

and siblings. To address these backlogs—whether on the employment or the family side—Congress needs to allocate additional green cards. The zero-sum approach advocated by H.R. 2131 would partially address some problems by making others worse.

It is important to note that although H.R. 2131 would help alleviate green card backlogs for certain employment-based immigrants, the number of green cards provided by the bill are far from sufficient to fully address employment-based backlogs. Even if H.R. 2131 were to become law, years-long backlogs would continue to exist for American employers seeking to hire foreign talent. Moreover, the bill's large increases in H–1B visas would likely increase green card backlogs as larger numbers of temporary H–1B workers seek green cards to remain permanently in the United States. Thus, H.R. 2131 would fail to fully address our broken employment-based immigration system, while at the same time doing tremendous damage to our family- and diversity-based immigration systems. This is not a trade worth making. Instead of providing what this Nation desperately needs—namely, a comprehensive solution that fixes our broken immigration system—H.R. 2131 is a flawed piecemeal approach that ensures the continued dysfunction of our immigration system.

II. H.R. 2131'S ELIMINATION OF THE DIVERSITY VISA PROGRAM WOULD HARM THE UNITED STATES

A. The Diversity Visa Program Serves Important National Needs

Elimination of the diversity visa program would be detrimental to various U.S. interests, including our ability to sustain a diverse nation and attract immigrants from all over the world. Our current immigration system, created in 1965, was preceded by the now-infamous national origin quota system that heavily favored immigrants from select countries, largely from Western Europe. That system unfairly locked out immigrants from other countries and ensured a lack of diversity in the United States. But even when national origin quotas were abolished in 1965, the new system's emphasis on family ties led to the continued concentration of immigrants from the countries that had been previously favored by the national origin quotas. Thus, in 1990, Congress created the diversity visa program to stimulate "new seed" immigration, both to address the imbalance in historical immigration and to ensure our ability to grow and sustain a diverse nation.

Based on the numbers alone, the program has been a resounding success. By making 50,000 immigrant visas[5] available per year to immigrants from otherwise under-represented countries,[6] the program has undeniably helped to balance demand within our immigration system so that countries with historically low immigration levels have experienced ever-growing representation within that system. The best example of this success concerns immigrants from African countries, which have been the largest beneficiaries of the

[5] Although the Immigration and Nationality Act (INA) sets the worldwide level of immigrant visas available under the diversity visa program at 55,000 annually, 5,000 of these visas are unavailable as a set-aside for immigrants eligible for relief under the Nicaraguan Adjustment and Central American Relief Act of 1997 (NACARA). *See* INA § 201(e), 8 U.S.C. § 1151(e) (setting diversity visa levels at 55,000); *see also,* section 203(d) of P.L. 105–100 (allocating 5,000 visas from the diversity visa program for recipients of relief under NACARA).

[6] *See* INA § 203(c), 8 U.S.C. § 1153(c) (outlining how countries are determined to be high- or low-admission countries for purposes of diversity visa program eligibility).

program and normally use between two-fifths and one-half of diversity visas every year.[7] In 1997, for example, persons from African countries received a total of 47,791 green cards, only 19,903 of which were obtained through the family-based immigration system.[8] But in 2013, after 17 years of benefitting from diversity-based immigration, African countries accounted for 98,304 green cards, 53,153 of which were family-based.[9] During this time period, the share of total immigrants who came from African countries increased from 6 percent to 10 percent.[10]

By completely eliminating the diversity visa program, H.R. 2131 would dramatically and adversely change the fact of immigration to the United States by closing off one of the few avenues for legal immigration. Our current immigration system revolves heavily around family- and employment-based immigration. For persons who lack familial ties to U.S. citizens or lawful permanent residents, or ties to U.S. employers, the only meaningful opportunity to immigrate to the U.S. is often the diversity visa program. Closing off that avenue means closing off the very opportunity to immigrate legally to the U.S. for the vast majority of people in the world.

Moreover, eliminating the diversity visa program would drastically reduce immigration from certain parts of the world and harm our ability to sustain a diverse Nation. Due to the relatively low levels of immigration from African nations, for example, immigrants from those nations normally comprise almost half of the diversity visa program's beneficiaries. In Fiscal Year 2013, African nations received 18,560 diversity visas, representing almost one-fifth (19%) of the 98,304 immigrants who came to the U.S. from those nations.[11] Eliminating the diversity visa program would thus have the immediate effect of reducing immigration levels from African countries by a similar percentage. And over time, this reduction in African immigration would compound as relatively fewer and fewer immigrants from those countries would be eligible to use the family-based immigration system for relatives. There is no question that eliminating the diversity visa program would seriously undermine African immigration and reduce diversity in the country.

Elimination of the diversity visa program would also reduce the number of immigrants who successfully contribute to the U.S. economy. In order to be eligible for a diversity visa, a person must have a high school diploma (or the equivalent) or at least 2 years of work experience in an occupation requiring at least 2 years of training or experience. While these requirements are less stringent than in some other immigrant visa categories, diversity visa immigrants have been generally more—not less—successful than the overall

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[7] U.S. Government Accountability Office, *Border Security: Fraud Risks Complicate State's Ability to Manage Diversity Visa Program,* GAO–07–1174 at 13 (2007) [hereinafter GAO Report].

[8] U.S. Dept. of Justice, *1997 Statistical Yearbook of the Immigration and Naturalization Service,* at Table 5 (Oct. 1999), available at http://www.dhs.gov/xlibrary/assets/statistics/yearbook/1997YB.pdf (last visited on July 12, 2013) [hereinafter 1997 Immigration Statistical Yearbook].

[9] Dept. of Homeland Security, *2013 Yearbook of Immigration Statistics,* at Table 10 (June 16, 2014), available at http://www.dhs.gov/yearbook-immigration-statistics-2013-lawful-permanent-residents (last visited on Dec. 9, 2014) [hereinafter 2013 Immigration Statistical Yearbook].

[10] *Compare* 1997 Immigration Statistical Yearbook, Table 5, *with* 2013 Immigration Statistical Yearbook, Table 10.

[11] 2013 Immigration Statistical Yearbook, Table 10.

lawful permanent resident population. According to an analysis issued by the Congressional Research Service (CRS) in April 2011:

> Although the diversity immigrants are required to have only a high school education (or the equivalent) or 2 years experience in an occupation which requires at least 2 years of training or experience, they were more likely to report managerial and professional occupations than LPRs [(lawful permanent residents)] generally. Specifically, almost [a] quarter (24%) of diversity immigrants reported managerial and professional occupations in contrast to 10% of the 1.1 million LPRs in FY2009.[12]

The CRS report also notes that diversity visa recipients are generally younger and more likely to become lawful permanent residents earlier in their working years than other persons who become lawful permanent residents, which means that diversity visa immigrants contribute to our Nation's economy for longer periods than lawful permanent residents generally.[13] Moreover, according to a recent Department of Homeland Security yearbook of immigration statistics, diversity visa immigrants had only a 5-percent rate of unemployment in 2013, significantly lower than the general unemployment rate of approximately 8 percent for all immigrants.[14]

Finally, elimination of the diversity visa program would undercut the significant foreign policy goal of sustaining the American dream in parts of the world where obtaining a diversity visa represents the only realistic opportunity for immigrating to the United States. Former Representative Bruce Morrison (D-CT)—one of the architects of the diversity visa program—testified in 2005 that it advances a principle that is "at the heart of the definition of America"—the principle that "all nationalities are welcome."[15] Similarly, Ambassador Johnny Young, Executive Director of Migration and Refugee Services for the U.S. Conference of Catholic Bishops, testified at a 2011 Judiciary Committee hearing that:

> the diversity immigrant visa program generates goodwill and hope among millions across the globe ravaged by war, poverty, undemocratic regimes, and opacity in government. Through the diversity immigrant visa program, the United States makes a counterpoint to that reality, a chance at becoming an integral member of an open, democratic society that places a premium on hard work and opportunity.[16]

Eliminating the diversity program means an end to the hope that the program engenders throughout the world.

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[12] Ruth Wasem, *Diversity Immigrant Visa Lottery Issues,* Congressional Research Service, R41747 at 6 (Apr. 1, 2011) [hereinafter CRS Report].

[13] 2013 Immigration Statistical Yearbook, Table 9.

[14] *Id.; see also* Letter from Sen. Charles E. Schumer, Chairman, Senate Judiciary Subcommittee on Immigration, Refugees and Border Security, to Rep. Elton Gallegly & Rep. Zoe Lofgren (Apr. 5, 2011) (on file with the H. Comm. on the Judiciary, Democratic Staff) (referring to statistics in CRS Report).

[15] *Hearing on the Diversity Visa Program Before the H. Subcomm. on Immigration, Border Security, and Claims of the H. Comm. on Judiciary,* 109th Cong. 49 (2005) (statement of the Honorable Bruce A. Morrison, former Member of Congress).

[16] *Safe for America Act: Hearing on H.R. 704 Hearing Before the H. Subcomm. on Immigration Policy and Enforcement of the H. Comm. on the Judiciary,* 112th Cong. 22, 45 (2011) [hereinafter H.R. 704 Hearing] (statement of Ambassador Johnny Young, Executive Director, Migration and Refugee Services, United States Conference of Catholic Bishops).

B. Eliminating the Diversity Visa Program Will Not Reduce Fraud.

The argument that the diversity visa program raises fraud and sceurity concerns is misleading. In fact, diversity visa winners are subject to the same immigration, criminal and national security background checks applicable to all persons applying to become lawful permanent residents, as well as interviews performed by officials from the State Department and the Department of Homeland Security. As discussed further below, following reports by both the GAO and the State Department's Office of Inspector General (OIG), numerous improvements have already been made to address concerns over fraud and security.

Although the Majority charges that the diversity visa program "is an open invitation for fraud and a jackpot for terrorists," [17] the GAO "found no documented evidence that [diversity visa] immigrants . . . posed a terrorist or other threat." [18] To the extent that security and other programmatic weaknesses have been identified, the State Department has made major improvements, such as converting to an electronic application process, requiring the submission of digital photographs for facial recognition analysis, ending the practice of notifying winners by mail, and increasing outreach and education to applicants.[19]

At the markup, Members of the Majority claimed that the diversity visa program is susceptible to abuse by terrorist groups who would do the Nation harm. But as former Representative Morrison testified in 2005, "it is absurd to think that a lottery would be the vehicle of choice for terrorists." [20] Twelve to twenty million people enter the diversity visa lottery each year, and no more than 50,000 visas are available. The diversity visa program is perhaps the most inefficient path for any alien seeking entry into the United States.

In truth, eliminating the diversity visa program has nothing to do with preventing fraud or protecting the United States from terrorists. Members of the Majority have long wanted to eliminate this legal immigration program simply to reduce immigration to the United States. The Judiciary Committee last Congress reported a bill on partisan lines that eliminated the diversity visa program without doing anything at all to boost STEM visas, reduce existing family- or employment-based backlogs, or reinforce diversity elsewhere in our immigration system. The Majority often talks about its support for legal immigrants, but this bill eliminates entirely one of the few programs providing a legal option for immigrating here. If there are flaws in the Program, they should be identified and addressed. Unfortunately, this bill simply terminates the program.

C. Elimination of The Sibling Category Would Undermine Family Immigration

The sibling category makes 65,000 green cards per year available to the brothers and sisters of U.S. citizens. H.R. 2131 would eliminate the category and render null and void the approved petitions of family members already in line. As of November 2014, there were about 2.5 million siblings with approved petitions waiting in

[17] *See* Markup Transcript at 7.
[18] *See* GAO Report at 26.
[19] H.R. 704 Hearing at 126–27.
[20] *See supra* note 15

the sibling backlog.[21] Of these, the 10 countries with the most family members in the sibling category were: Mexico (741,233), India (244,813), China-mainland born (175,485), Vietnam (174,111) Philippines (159,538), Bangladesh (159,071), Pakistan (93,427), Dominican Republic (60,131), Haiti (50,487), and Cuba (50,077).[22]

The sibling category is the only avenue for the immigration of siblings, and its elimination would only damage the strong and robust family immigration system that is crucial to the social and economic success of immigrant families in the United States. It is well-accepted that family-based immigration benefits communities and businesses all across the Nation. Siblings often contribute to family-owned businesses, pooling resources such as time and money to ensure the success of their ventures. Many of these small and medium-sized businesses, which create jobs for American workers, would not exist without sibling-based immigration. Studies show that immigrants, the vast majority of whom come to the United States through family visas, are nearly twice as likely to start businesses in the U.S. as native-born Americans.[23] Immigrant businesses have grown their contribution to the national business income by 36% in a decade, whereas businesses started by native-born Americans have increased their contribution by 14% over the same period.[24]

Siblings also play a critical role as caregivers for children and the elderly, providing their families with necessary support. This caregiving function further frees up others in the family to continue running businesses, work and contribute to the economy. We should all be able to agree that strong families build a strong middle class and help grow our economy, making the United States more competitive in the global market.

It is also important to keep in mind that our Nation is stronger when both the employer- and family-based immigration systems work together in harmony. Our family-based immigration system makes the United States even more attractive to employment-based immigrants who may want the flexibility to bring loved ones to the United States once they are established here. Many highly-skilled immigrants may forego immigrating to the United States without the option of petitioning for their siblings. At the same time, workers who have the support and encouragement of their family members are more likely to be productive and successful as they strive to integrate into our communities. Lengthy family separations are stressful and take a personal toll on workers. It forces many immigrant workers who are separated from their families to send money overseas rather than being able to invest all of it in their local communities.

Also, eliminating the ability for U.S. citizens to sponsor their siblings will significantly disadvantage women who want to come to the United States, particularly unmarried women. Approximately 70% of immigrant women come to this country through the family-based system, as many women in other countries do not have the same educational or career advancement opportunities available to

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[21] *See supra* note 3.
[22] *See supra* note 3.
[23] Robert W. Fairlie, *Kauffman Index of Entrepreneurial Activity,* Ewing Marion Kauffman Foundation, 3 (Apr. 2014).
[24] Josephine Goube, *US Immigrant Entrepreneurs: Latest Data and Statistics,* Sept. 25, 2014.

men. In the current immigration system, employment-based visas favor men over women by nearly a four to one margin as they place a premium on male-dominated fields, like engineering and computer science.[25] By eliminating the sibling category, the bill would severely cut off a main avenue for women to immigrate to the United States and in effect cement into U.S. immigration law the unfairness women face across the globe. Moreover, immigrant women are critical for the successful integration of their families. They provide stability for the family and help establish permanent roots in our communities. Immigrant women are also more likely to initiate the citizenship process for their families, as well as having a higher propensity to naturalize and become active members of our society.

Finally, in its current form, the bill would not only eliminate the sibling category, it would also render null and void the approved petitions of family members already in line. Some siblings have already been waiting for years, even decades, to be reunited with their U.S. citizen brothers and sisters. This extreme change would conflict with our fundamental principle of fairness. Moreover, by unnecessarily eliminating family members who have already waited for many years, the bill hurts our standing with the international community and signals to aspiring talented new Americans that the United States does not follow through on its commitments.

CONCLUSION

The zero-sum approach to immigration employed by H.R. 2131 is caustic, both because it pits groups of immigrants against each other and because it fails to address the fundamental problems afflicting our Nation's broken immigration system. Our dysfunctional immigration system cannot be fixed without addressing the incredibly long green card backlogs for employment- and family-based immigrants that have been plaguing the U.S. for decades. There are currently an estimated 400,000 to 500,000 persons with approved employment-based petitions who are stuck in the employment-based green card backlogs, which means they cannot actually receive a green card because there are insufficient numbers made available every year. On the family-side, there are more than 4.5 million persons with approved petitions waiting in the green card backlogs.

To address these backlogs—whether on the employment or the family side—Congress needs to allocate additional green cards. While H.R. 2131 would help alleviate green card backlogs for certain employment-based immigrants, the number of green cards provided by the bill are far from sufficient to fully address employment-based backlogs. In fact, if H.R. 2131 were to become law, years-long backlogs would continue to exist for American employers seeking to hire foreign talent. And because of the bill's large increases in temporary H–1B visas, green card backlogs are likely to increase as larger numbers of H–1B workers seek green cards to remain permanently in the United States.

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[25] Letter from Wade Henderson, President and CEO, The Leadership Conference on Civil and Human Rights, and Nancy Zirkin, Executive Vice President, The Leadership Conference on Civil and Human Rights, to Senator, June 26, 2013, available at http://civilrightsdocs.info/pdf/policy/letters/Hirono-Amednment-1718-letter-6–26–13.pdf.

Thus, H.R. 2131 would fail to fully address our broken employment-based immigration system, while at the same time doing tremendous damage to our family- and diversity-based immigration systems. Adoption of the bill's zero-sum approach, if carried forward, would prevent future fixes to further address employment- and family-based green card backlogs. Instead of providing what this Nation desperately needs—namely, a comprehensive solution that fixes our broken immigration system—H.R. 2131 is a flawed piecemeal approach that ensures the continued dysfunction of our immigration system.

For the foregoing reasons we urge our colleagues to oppose H.R. 2131.

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